Supreme Court, U.S.
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No. _____

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1994

EL DORADO PALM SPRINGS, LTD.,
a California Limited Partnership,
dba EL DORADO MOBILEHOME PARK,
Petitioner,
vs.
RENT REVIEW COMMISSION OF THE
CITY OF PALM SPRINGS,
Respondent.
RESIDENTS OF EL DORADO MOBILEHOME PARK,
Real Party in Interest-Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION TWO

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the October 30, 1991 ruling by the Rent Review Commission of the City of Palm Springs terminating a previously awarded "hardship" increase in the regulated lot rents in petitioner's mobilehome park has effected a regulatory taking in violation of the Just Compensation Clause of the Fifth Amendment? Termination of the increase leaves petitioner with millions of dollars in uncompensated losses from operations and no ability to generate a profit in the future.

2. Whether terminating that portion of the rent increase attributable to petitioner's debt service expenses has effected a regulatory taking violating the Just Compensation Clause of the Fifth Amendment?

3. Whether terminating that portion of the rent increase attributable to petitioner's debt service expenses is an exercise of the police power violating the Due Process Clause of the Fifth and Fourteenth Amendments?

4. Whether terminating that portion of the rent increase attributable to petitioner's non-debt service expenses has effected a regulatory taking violating the Just Compensation Clause of the Fifth Amendment?

5. Whether terminating that portion of the rent increase attributable to petitioner's non-debt service expenses is an exercise of the police power violating the Due Process Clause of the Fifth and Fourteenth Amendments?

6. Whether terminating that portion of the rent increase attributable to petitioner's non-debt service expenses is arbitrary and capricious and, therefore, an invalid exercise of the police power under the Fifth and Fourteenth Amendments?

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PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION TWO

I.

OPINIONS BELOW

The October 30, 1991 Findings and Decision of the Rent Review Commission of the City of Palm Springs terminating the previously awarded "hardship" rent increase by limiting the duration thereof is included in the Appendix hereto as Document No. 2. The Riverside County Superior Court's December 12, 1991 Minute Order in County Action No. Indio 57251, denying petitioner's Motion for Post-Judgment enforcement of a December 8, 1989 Peremptory Writ of Mandate by vacating the October 30,

1991 Commission Findings and Decision is included in the Appendix as Document No. 3. The Riverside County Superior Court's April 20, 1992 Minute Order in County Action No. Indio 66104, denying petitioner's Petition for Writ of Administrative Mandate to correct alleged errors in the Commission's October 30, 1991 Findings and Decision is included in the Appendix as Document No. 4. The April 1, 1994 decision of the Fourth Appellate District, Division Two of the Court of Appeal of the State of California affirming both Superior Court rulings is included in the Appendix as Document No. 1. The June 30, 1994 ruling of the California Supreme Court denying petitioner's Petition for Review of the decision of the Court of Appeal is included in the Appendix as Document No. 5.

II.

JURISDICTION

The decision of the California Court of Appeal was filed on June 1, 1994. On June 30, 1994, the California Supreme Court issued its order denying petitioner's Petition for Review.

The jurisdiction of the Court is invoked under 28 U.S.C. § 1257. Review is also sought under Supreme Court Rule 10.1(c) on the ground that the California Court of Appeal decision conflicts with applicable decisions of this Court.

III.

CONSTITUTIONAL PROVISIONS, STATUTES, AND TREATIES INVOLVED

A. The Fifth Amendment of the United States Constitution: "No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private

property be taken for public use, without just compensation."

B. The Fourteenth Amendment of the United States Constitution:

> "[n]or shall any State deprive any person of life, liberty, or property, without due process of law. . ."

IV.

STATEMENT OF FACTS

A. Identification of Parties

Petitioner El Dorado Palm Springs, Ltd., a California limited partnership dba El Dorado Mobilehome Park ("El Dorado") is the owner of the El Dorado Mobilehome Park, an upscale resort-style[1] mobilehome residential park located in Palm Springs, California. El Dorado is in the business of leasing spacious, double-wide lots in the park to owners of mobilehomes. The Rent Review Commission of the City of Palm Springs (the "Commission") is a public administrative body organized and existing under the authority of Palm Springs Municipal Code Section 4.08.070(a), essentially to consider and act upon so-called "hardship" rent increase petitions of residential rental property owners seeking increases in rent ceilings under the Palm Springs rent control law on the basis of demonstrated economic hardship. Residents of the El Dorado Mobilehome Park ("Residents"), real parties in interest and respondents below, are owners of mobilehomes who presently lease or rent lots from El Dorado in the El Dorado Mobilehome Park.

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[1]The park is located on 50 acres of prime location real estate surrounded by mountains. It has a 10,000 square foot deluxe clubhouse, two swimming pools, one jacuzzi, two tennis courts, six shuffle board courts, and a greenbelt and hiking area.

B. Statement of Case

El Dorado purchased the park in 1986 in reliance upon provisions of the Palm Springs rent control law then in effect under which it was entitled to a monthly hardship rent increase of approximately $180.00 per lot in its 377-lot park. The majority of the hardship increase was obtainable to compensate El Dorado for its costs in servicing sizeable purchase money financing obligations.

After El Dorado committed to the purchase and debt service obligations, the Palm Springs City Council, bending to political pressure from the Residents, repealed that portion of the rent control law concerning debt service costs. The Commission, on the basis of the repeal, denied two-thirds of El Dorado's requested rent increase.

El Dorado thereafter recovered its rightful increase by means of a 1989 Riverside County Superior Court Peremptory Writ of Mandate, affirmed by the California Court of Appeal in 1991. El Dorado's initial court victories proved hollow. The Residents simply returned to the administrative level and, by asserting new arguments and further political pressure, persuaded the Commission to terminate the entire rent increase.

The California courts, in declining to interfere a second time to protect El Dorado, have failed to consider adequately the confiscatory effect of the rent control law on El Dorado resulting from termination of the previously awarded rent increase. As a result of the termination, El Dorado is unable to obtain a fair return. It is being forced to operate the park at a loss and cannot recover through raised rents the millions of dollars in operating losses that it has already suffered because of the Palm Springs rent control law.

C. Procedural History and Underlying Facts

The Palm Springs Rent Control Law

The Palm Springs Rents Control Law, first adopted in 1980, limits the rent a mobilehome park owner may charge to residents of the park. Ordinance No. 1117 created the Commission and delegated to it the authority to receive, hear, and determine claims for hardship rent increases. A landlord's petition for hardship rent increase is determined according to a mathematical formula focusing on net income from operations, referred to as "NOI" (net operating income). NOI is described as gross income less allowable operating expenses. "Hardship" justifying a rent increase is measured by deficiencies in NOI.

Limit on Commission's Authority

The Commission, pursuant to its authorizing legislation, is obliged to award increases either "permanently," or for a "stated period of time." The Commission's authorizing legislation does not allow the Commission to award hardship rent increases of indeterminate duration.

In addition, the Commission has never had the power to retain jurisdiction over a hardship rent increase petition for the purpose of modifying or amending a final decision after determination thereof.

El Dorado's Administrative Petition for Hardship Rent Increase

El Dorado purchased its park on April 1, 1986, and thereafter petitioned the Commission for a hardship rent increase pursuant to certain provisions of a mandatory section of the Palm Springs Rent Control Law euphemistically known as the "Guidelines." Guideline section 101(c)(1)(xii) enabled El Dorado to include in its hardship rent increase calculation a substantial portion of its purchase

money financing expenses. On or about April 16, 1986, the Commission began hearings on El Dorado's application. While the hearings were pending, the Palm Springs City Council repealed Guideline section 101(c)(1)(xii).

On or about October 17, 1988, the Commission issued its Findings and Decision on El Dorado's administrative petition (the "Findings and Decision"). The Findings and Decision disallowed the majority of El Dorado's claimed expenses due to debt service costs because of the repeal of Guideline section 101(c)(1)(xii). The Commission granted El Dorado an increase of approximately one-third of the amount requested, namely, $65.17 per space per month, "effective September 1, 1988 and [to] continue thereafter until further order of [the] Commission." Consistent with the limitations in the Commission's authorizing legislation, this increase was not for a "stated period of time." By process of elimination, it was, therefore, one to be in effect "permanently."

County Action No. I-57251, the Writ Proceeding

On May 22, 1989, El Dorado filed a Petition for Writ of Mandate in the California Superior Court for the County of Riverside seeking to increase the amount of the hardship rent increase award from $65.17 per space per month to $179.46 per space per month. El Dorado contended, among other things, that the amount of the hardship rent increase sought in its administrative petition had been justified in the administrative hearing thereon by, among other things, uncontroverted evidence of economic hardship in the form of substantial and continuing losses from operations as well as uncontroverted evidence of the rent increase necessary for a fair, just and reasonable return on its property according to at least three different asserted appropriate measures:

(a) market rental prices without imposition of rent control;[2] (b) fair return on replacement costs; and (c) fair return on investment.

On December 8, 1989, the Superior Court issued a Peremptory Writ of Mandate directing the Commission to include the full amount of debt service costs pursuant to Guideline section 101(c)(1)(xii) and certain other expenses in the calculation of the monthly hardship rent increase from and after March 1, 1990.

Residents' Appeal From the Order Granting Writ

On December 11, 1989, the Residents appealed the Superior Court Order granting the Peremptory Writ. On May 20, 1991, in an opinion reported, in part, as *El Dorado Palm Springs, Ltd. v. Rent Review Com.*, 230 Cal.App.3d 335, 281 Cal.Rptr. 327, *rev.* den., 1991 Cal. LEXIS 4091 (1991) ("*El Dorado I*"), the California Court of Appeal, Fourth Appellate District, Division Two, affirmed the Superior Court Order and Peremptory Writ in full. The appellate court held, among other things, that El Dorado's right to have its debt service costs treated pursuant to Guideline section 101(c)(1)(xii) vested when it purchased the park and incurred its purchase money financing obligations in reliance upon this Guideline provision. El Dorado, accordingly, could not be prejudiced by the subsequent repeal of section 101(c)(1)(xii).

Residents' Administrative Petition

On September 5, 1991, after *El Dorado I* became final, the Residents filed with the Commission a document enti-

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[2]The full $179.46 per space per month increase brings El Dorado's lot rents even with *but does not exceed* rents at two parks within a five-mile-radius of El Dorado's park. Those parks provide a good measure of market rate because they are located on Indian land and, accordingly, not regulated by the Palm Springs rent control law.

tled "Petition by Tenants of El Dorado Mobilehome Park for Interpretation and/or Review of Landlord's Actions or Proposed Actions In Re: 'Notice of Rent Increase In Amount of $114.29/Month-Plus'." The Residents' administrative petition asked the Commission to reopen its final deliberations concerning El Dorado's April 1, 1986 hardship rent increase petition and revoke the entire hardship rent increase award ordered by the Peremptory Writ as well as a portion of the increase originally granted in the Findings and Decision.

Commission's Rulings on Residents' Administrative Petition

The Commission purported to exercise jurisdiction based on a comment in the Court of Appeal opinion regarding refinancing of purchase money debt. The Commission believed that it could strike its earlier award including the supplement ordered by Peremptory Writ of Mandate because of an involuntary replacement refinancing by El Dorado that occurred in 1989 — a refinancing of which the Court of Appeal was aware when it affirmed the trial court's Peremptory Writ of Mandate in full in *El Dorado I.*

Accordingly, the Commission requested and received evidence by declaration and heard arguments of counsel on October 8, 1991. El Dorado's principal, James F. Goldstein, submitted an unchallenged declaration detailing the specifics of El Dorado's 1989 refinancing of its purchase money debt. The refinancing was required to fund a due balloon payment in one of El Dorado's two original purchase money notes and to replace both with a new, single note. Under section 101(c)(1)(xiii) of the Guidelines, purchase money financing subject to favorable treatment according to section 101(c)(1)(xii), includes refinancing where the proceeds are used to pay balloon or unamortized principal payments on the original purchase money debt. Mr. Goldstein's declara-

tion showed that El Dorado relied on Guideline section 101(c)(1)(xiii) no less than on 101(c)(1)(xii) when it purchased the park and incurred its purchase money financing obligations, inclusive of the obligation to refinance in 1989 because of the balloon payment due date.

Notwithstanding El Dorado's uncontradicted evidence, the Commission, on October 30, 1991, concluded that El Dorado's 1989 refinancing of its purchase money debt should bar that portion of El Dorado's hardship rent increase attributable to its debt service costs. Furthermore, the Commission terminated El Dorado's *entire* hardship rent increase, not simply that portion of the increase attributable to debt service.

Not only did the Commission illegally cut off what had theretofore been an unlimited award of $127.79 per space per month attributable to purchase money financing costs; it issued the same illegal limitation on duration as to the remaining $51.67 per space per month. All parties readily admit that the remaining $51.67 per space per month increase is attributable to El Dorado's recurring operating expense having nothing whatsoever to do with purchase money financing.[3]

Moreover, the Commission completely ignored uncontradicted evidence of El Dorado's financial plight: El Dorado's operating losses reported to the Internal Revenue Service for the five year period after purchase of the park total $1,583,475.00. This figure represents *actual cash losses* before depreciation and without consideration of any payments of principal on El Dorado's debt.

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[3]Such expenses where either proved or deemed to be recurring in the two years plus of Commission hearings on El Dorado's administrative petition. Non-recurring expenses were amortized according to the existing legislated formula for calculating net operating income.

El Dorado's Challenges to the Commission's October 30, 1991 Rulings

On November 15, 1991, El Dorado filed a motion under California Code of Civil Procedure section 1097 seeking post-judgment enforcement of the 1989 Peremptory Writ of Mandate by vacation of the Commission's October 30, 1991 Findings and Decision. In that motion, filed in County Action No. Indio 57251, El Dorado contended that the October 30, 1991 Findings and Decision interfered with its rights under the 1989 Peremptory Writ of Mandate.

On January 28, 1992, El Dorado filed a Petition for Writ of Mandate and Administrative Mandate seeking review of the legality of the October 30, 1991 Findings and Decision considered without reference to the 1989 Peremptory Writ of Mandate. In that petition, County Action No. Indio 66104, El Dorado contended, among other things, that the October 30, 1991 Commission ruling unconstitutionally deprived it of a fair, just and reasonable return.

El Dorado's Motion and Petition were both denied by the Superior Court by minute orders respectively dated December 12, 1991, and April 20, 1992.

In the California Court of Appeal, El Dorado challenged each of the foregoing Superior Court rulings. Specifically, in Appeal No. E-010773, El Dorado challenged the December 12, 1991 minute order in County Action No. 57251; in Appeal No. E-011072, El Dorado challenged the April 20, 1992 minute order in County Action No. 66104. El Dorado's appeals were consolidated in the Court of Appeal, and then further consolidated with an appeal by the Residents of the denial of their own Petition for Writ of Mandate.

After hearing oral argument on March 2, 1994, the Court of Appeal issued its Opinion on April 1, 1994 affirming the trial court's Orders and Commission actions in full. On June 30, 1994, the California Supreme Court denied El

Dorado's Petition for Review of the Court of Appeal's decision.

D. Federal Constitutional Issues Raised Below

El Dorado argued before the Commission, in the Superior Court, the Court of Appeal, and its Petition for Review to the California Supreme Court, that it was being unconstitutionally deprived of a fair return. At paragraph 92 of El Dorado's Petition for Writ of Administrative Mandate before the Superior Court, El Dorado states that the Superior Court is "obliged to inquire . . . whether the Commission, in acting to limit the duration of the El Dorado's hardship rental increase in the manner hereinbefore specified constitutes a failure to grant El Dorado a fair, just and reasonable return . . ." Similarly, at paragraph 95 of its petition, El Dorado states: "No portion of the Rent Control Law can constitutionally be applied to El Dorado so as to deprive it of a just and reasonable return on its property."

Similarly, at page 40 of El Dorado's opening brief to the Court of Appeal, El Dorado states: "In issuing its Findings and Decision on Residents' Petition, the Commission has, by limiting the duration of hardship rental increases previously granted to El Dorado, deprived El Dorado of a fair, just and reasonable return on its property. Such action is constitutionally impermissible. [Citation]."

Finally, El Dorado unequivocally raised the issue of the deprivation of its constitutional rights in its Petition for Review to the California Supreme Court. In seeking review of the Court of Appeal decision, El Dorado argued at page 15 of its petition that "the Commission's October 30, 1991 decision deprived it of a fair, just and reasonable return on its property. As such, . . . the Commission's October 30, 1991 decision was unconstitutional. [Citation.]" Further, at page 18 of its petition, El Dorado stated: "In issuing its Findings and Decision on the Residents' administrative

petition, the Commission has, by limiting the duration of hardship rent increases previously granted El Dorado, deprived El Dorado of a fair, just and reasonable return in violation of the Constitution. [Citation.]"

Each time, El Dorado's arguments fell on deaf ears. El Dorado now, in a final attempt to protect its rights under the Constitution, brings this Petition before the Court.

V.

ARGUMENT

For the reasons set forth below, the Commission's October 30, 1991 ruling violates El Dorado's Constitutional rights under the Just Compensation Clause and Due Process Clause of the Fifth Amendment. Simply put, the Commission, in limiting the duration of the debt service portion and non-debt service portions of a previously awarded hardship rent increase, has denied El Dorado all economically viable use of its property.

A. By Cutting Off the Debt Service and Non-Debt Service Portions of the Previously Awarded Hardship Rent Increase, the Commission Has Violated El Dorado's Constitutional Rights Under the Just Compensation Clause of the Fifth Amendment.

The Fifth Amendment precludes the Government from "taking" private property without the payment of just compensation. A taking may occur in two different ways, by physical occupation and by regulation. *Yee v. City of Escondido, California*, 112 S.Ct. 1522, 1532, 118 L.Ed.2d 153 (1992). In the present case, the Commission has taken petitioner's property by regulation.

El Dorado does not dispute that the state has broad power to regulate the landlord-tenant relationship without paying compensation for all economic injury that such regulation

entails. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 418, 440, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982). However, the state is not free to regulate rents without limit. Writing for the majority in *Pennsylvania Coal Company v. Mahon*, 260 U.S. 393, 415, 43 S.Ct. 158, 67 L.Ed. 322 (1922), Justice Homes stated: "the general rule, at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *See also Williamson Co. Regional Planning v. Hamilton Bank* 473 U.S. 172, 198, 105 S.Ct. 3108, 473 U.S. 172, 87 L.Ed. 2d 126 (1985); *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 533-34, 106 S.Ct. 2561, 91 L.Ed.2d 285 (1986). Thus, while a rent review commission is permitted to protect tenants from burdensome rent increases, it must also ensure that landlords are guaranteed a fair return on their property. *Birkenfeld v. City of Berkeley*, 17 Cal.3d 129, 165, 130 Cal.Rptr. 465, 550 P.2d 1001 (1976). Indeed, in determining the Constitutionality of a rent control ordinance, this Court in *Pennell v. City of San Jose*, 405 U.S. 1, 13, 108 S.Ct. 849, 99 L.Ed.2d 1 (1988), expressly recognized the legitimate interest of "ensuring that landlords are guaranteed a fair return on their investment."

The California Supreme Court has addressed the question of what the Federal Constitution requires by way of a fair return. As a Constitutional matter, a fair return on property is that amount which is sufficient to assure confidence in the financial integrity of the enterprise, as to maintain its credit and to attract capital. A fair return requires that the equity owner receive enough revenue not only for operating expenses but also for capital costs including debt service costs and a reasonable profit. *Calfarm Insurance Company, et al. v. Deukmejian, etc., et al.*, 48 Cal.3d 805, 258 Cal.Rptr. 161, 771 P.2d 1247 (1989).

Here, the Commission has eliminated both the hardship increase for operating expenses and the hardship increase for debt service costs. Under any measure, El Dorado has been denied a fair return on its investment because it is forced to operate *at a loss.* El Dorado has presented undisputed evidence to the Commission that during and subsequent to the year of application, it had suffered and continues to suffer over one and one-half million dollars in *actual cash losses* from park operations. El Dorado established a pattern of operating losses in and subsequent to the year of application.[4]

Moreover, at oral argument before the Court of Appeal, the Residents conceded that rent levels at El Dorado's park have been confiscatorily low for years and that El Dorado has not received its Constitutionally guaranteed fair return. Likewise, in the Residents' Petition for Review filed with the California Supreme Court, the Residents stated that the Commission's actions "constitute a 'taking' by the Commission of [El Dorado's] property."

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[4]El Dorado's cash flow operating losses, before depreciation and excluding principal payments, reported to the Internal Revenue Service for the five year period after purchase of the park total $1,583,475.00. Moreover, as is hereinafter discussed, El Dorado filed a subsequent petition with the Commission for a hardship rent increase for 1987. The administrative records of the Commission's hearings of El Dorado's 1986 and 1987 petitions contain ample and detailed evidence of El Dorado's actual income and expenses for a full five consecutive years, 1986-90. This evidence in the administrative records demonstrates that the hardship rent increase sought by El Dorado in its 1986 administrative petition and awarded under the 1989 Peremptory Writ of Mandate affirmed in 1991 by the Court of Appeal in *El Dorado I*, was fully justified by El Dorado's protracted and continuing economic difficulties. El Dorado's recent tax returns, compiled for periods during which the now terminated rent increase was in effect, do not show losses of the same magnitude. The losses, however, will again begin to mount because of the termination of the rent increase.

As a result of the October 30, 1991 decision, El Dorado is *losing money* on its investment. Therefore, under *Calfarm, cited supra*, the Commission has clearly effected a taking. *See also Nollan v. California Coastal Commission*, 483 U.S. 825, 834, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987) (a regulation will be held invalid where it denies an owner economically viable use of his property); *Ruckleshaus v. Monsanto Co.*, 467 U.S. 986, 1005, 104 Sup.Ct. 2862, 81 L.Ed.2d 815 (1984) (recognizing that governmental action "so complete as to deprive the owner of all or most of his interest" can amount to a taking).

The Court of Appeal made no attempt to dispute that El Dorado did not receive a fair return. Instead, the Court of Appeal stated that El Dorado had failed to exhaust its administrative remedies by not presenting evidence that it had filed petitions for a hardship rent increases after 1986. However, at oral argument, and again in El Dorado's Petition for Rehearing, El Dorado called the Court of Appeal's attention to the Commission's Findings and Decision at pages 719-39 of the Clerk's Transcript in Civil No. E-010773 wherein El Dorado demonstrated that it filed a petition for hardship rent increase for 1987. Indeed, as El Dorado pointed out, at page 137 of the record, the Commission found a hardship of $156.56 per space per month yet reneged on that award as a result of the amounts awarded in El Dorado's 1986 petition. Accordingly, the record is clear that El Dorado exhausted its administrative remedies by filing petitions for hardship rent increases after 1986.

The Court of Appeal also attempted to justify the Commission's termination of the non-debt service portion of the hardship rent increase award on the grounds that the Commission's act "is interlocutory, and El Dorado is entitled to bring a subsequent petition or to seek a further order . . ." In so doing, the Court of Appeal has failed to consider that El Dorado, as a practical matter, is severely prejudiced by

having to once again prove to the Commission what it has already proved in over two years of administrative hearings and three years of litigation pertaining to its 1986 hardship rent increase petition, and in over two years of additional administrative hearings and pending litigation pertaining to its 1987 hardship rent increase petition.

Moreover, the Palm Springs rent control law now provides, and the Court of Appeal envisions, that hardship increases are presumptively limited to twelve-month's duration, thereby forcing landlords to file and prosecute rent increase petitions annually. El Dorado can take little solace in the prospect that it may renew its application pertaining to these expenses "without prejudice," and, thereafter, submit yearly petitions to the Commission. The record clearly demonstrates that the time and expense associated with renewing El Dorado's application or making any additional and yearly applications far outweighs any possible benefit to be gained. Thus, El Dorado is effectively precluded from ever obtaining the hardship rent increases to which it is entitled. Based on past experience of almost five years of administrative hearings for only two hardship rent increase petitions, El Dorado's hearings would never cease.[5]

In *Yee v. City of Escondido, California*, 112 S.Ct. 1522, 1525, 118 L.Ed.2d 153 (1992), this Court had recent occasion to consider the application of the Just Compensation Clause in the context of rent control legislation pertaining to a mobilehome park. In *Yee*, this Court addressed only the issue of whether a local rent control ordinance, when viewed against the backdrop of California's Mobilehome Residency Law, amounted to a *physical taking*. Although petitioners in *Yee* also argued that the application of the

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[5]Moreover, with El Dorado forced to bring yearly rent increase petitions, El Dorado would never be able to sell or refinance because the buyer or lender would never be able to rely on the income stream with any degree of reasonable expectation.

ordinance constituted a regulatory taking, the Court declined to hear that issue on the ground that pursuant to Supreme Court Rule 14.1 the issue was not properly before the Court. The Court found that the *Yee* petitioners had not properly included the regulatory taking issue in the questions presented in their certiorari petition. Moreover, the Court stated, "Prudence also dictates awaiting a case in which the issue was fully litigated below, so that we will have the benefit of developed argument on both sides and lower court opinions squarely addressing the question." *Id.* at 1534.

Here, El Dorado has properly presented the regulatory taking issue in its questions presented to the Court and the issue has been fully litigated below. The Court should seize the opportunity to address the regulatory taking issue left unresolved in *Yee*.

B. The Commission, by Terminating the Debt Service Portion and Non-Debt Service Portion of the Previously Awarded Hardship Rent Increase, Violated Petitioner's Rights Under the Due Process Clause of the Fifth and Fourteenth Amendments.

In addition to violating the Just Compensation Clause, the Commission's actions in terminating the previously awarded hardship increase constitute a violation of the Due Process Clauses of the Fifth and Fourteenth Amendments. As explained by the Court in *Williamson Co. Regional Planning v. Hamilton Bank*, 473 U.S. 172, 198, 105 S.Ct. 3108, 87 L.Ed. 2d 126 (1985), excessive government regulation might be considered a violation of either or both the Just Compensation Clause and the Due Process Clause. The *Williamson* Court pointed out that when the Court in *Pennsylvania Coal* held that a regulation which goes too far may constitute a taking, it may have used the word "taking" not in a literal Fifth Amendment sense but as a metaphor for actions having the same effect as a taking by eminent

domain. *Id.* The Court noted that there is support for the notion that excessive regulation constitutes a violation of the Due Process Clause based on the fact that the *Pennsylvania Coal* Court framed the question presented as "whether the police power can be stretched so far" as to destroy property rights.[6] *Id.* The *Williamson* Court stated that regardless of whether it is considered a violation of the Just Compensation Clause or a violation of the Due Process Clause the analysis is essentially the same. *Id.* at 199. In either case, the Court must determine whether the regulation "goes too far." *Id.* at 199-200. The Court will look to the effect the government action has on the value of the petitioner's property and its investment-backed profit expectations. *Id.*

For the reasons set forth in Section V.B. above, the Commission's actions have clearly gone too far. Not only has the Commission precluded El Dorado from earning a fair return on its investment, the Commission has caused El Dorado to suffer operational losses. Accordingly, the Commission's actions have exceeded the limitations on the police power and are therefore violative of the Due Process Clause of the Fifth and Fourteenth Amendments.

C. The Commission's Action in Terminating the Non-Debt Service Portion of the Previously Awarded Hardship Rent Increase Is Arbitrary and Capricious, Does Not Bear a Substantial Relation to the Public Health, Safety, Morals, or General Welfare, and is Therefore an Invalid Exercise of the Police Power.

The original Findings and Decision granted El Dorado a per space per month hardship rent increase of $65.17, $41.44 of which is attributable to non-debt service expenses.

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[6]The *Williamson* Court passed on the opportunity to decide whether excessive regulation is both a violation of the Due Process Clauses and the Just Compensation Clause. This petition should be granted so that the Court may decide the issue.

The Superior Court's Peremptory Writ of Mandate supplemented the hardship rent increase award by $114.29, $10.23 of which is attributable to non-debt service expenses. Thus, it is undisputed that a full $51.67 per space per month of expenses comprising almost one-third of El Dorado's demonstrated hardship has absolutely nothing whatsoever to do with the debt service, refinancing and vested rights issues with which *El Dorado I* was concerned.

The Commission had no reason or occasion to terminate this $51.67 per space per month amount. This error was called to the attention of the Commission at the time it announced its decision, but to no avail. Accordingly, the Commission's October 30, 1991 Findings and Decision, to the extent that it cuts off the $51.67 per space per month not based on increases in El Dorado's debt service costs constitutes relief above and beyond that requested in the Residents' administrative petition, and is an arbitrary and capricious act by the Commission.

No legal or factual basis exists for the Commission to terminate the $51.67 hardship increase attributable to recurring non-debt service expenses. The sole justification given by the Commission for terminating the hardship increase is the fact of El Dorado's 1989 refinancing. Obviously, El Dorado's refinancing has no relation to that portion of the hardship increase which is not attributable to debt service.

A governmental action constitutes an invalid exercise of the police power where the action is arbitrary and capricious, and does not bear a substantial relation to the public health, safety, morals, or general welfare. *Eide v. Sarasota County*, 908 F.2d 716, 721 (11th Cir. 1990); *see also Nectow v. City of Cambridge*, 277 U.S. 183, 286, 48 Sup.Ct. 447, 72 L.Ed. 842 (1928). As the Commission's action cannot be justified by the reason given and has no other discernible legitimate basis, it constitutes an invalid exercise of the police power.

VI.

CONCLUSION

El Dorado has suffered millions of dollars in cash losses from operations, before depreciation and excluding payments of principal, resulting from application of the Palm Springs rent control law. Thus, by any measure of fair return, the Commission's termination of the previously awarded hardship rent increase cannot be squared with the requirements of the Federal Constitution. For the reasons set forth above, it is respectfully requested that this Petition be granted and that the Court review the issues set forth herein.

Dated: September 27, 1994

Respectfully submitted,

RICHARD E. POSELL
SHAPIRO, POSELL, ROSENFELD & CLOSE

Attorneys of Record for Petitioner
El Dorado Palm Springs, Ltd.,
a California limited partnership
dba El Dorado Mobilehome Park

APPENDIX

Document Number	Description	Pages
1	April 1, 1991 California Court of Appeal Decision affirming both Superior Court rulings	1-27
2	Findings and Decision on Petition of Residents Filed September 5, 1991	1-9
3	December 12, 1991 Superior Court Minute Order denying petitioner's Motion for Post-Judgment enforcement of a December 8, 1989 Peremptory Writ of Mandate	1-2
4	April 20, 1992 Superior Court Minute Order denying petitioner's Petition for Writ of Administrative Mandate	1
5	June 30, 1994 California Supreme Court Minute Order denying petitioner's Petition for Review	1-3

APPENDIX 1

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APPENDIX 1

NOT FOR PUBLICATION
COURT OF APPEAL, FOURTH DISTRICT
DIVISION TWO
STATE OF CALIFORNIA

EL DORADO PALM SPRINGS, LTD., etc.,
Petitioner and Appellant,
v.
RENT REVIEW COMMISSION OF THE CITY OF PALM SPRINGS,
Respondent.
RESIDENTS OF THE EL DORADO MOBILE HOME PARK,
Real Parties in Interest and Respondents.

RESIDENTS OF THE EL DORADO MOBILE HOME PARK,
Petitioners and Appellants,
v.
RENT REVIEW COMMISSION OF THE CITY OF PALM SPRINGS,
Respondent.
EL DORADO PALM SPRINGS, LTD., etc.,
Real Party in Interest and Respondent.

E010773 & E011072
(Super.Ct.Nos. I 57251 I 66104)

OPINION

E011103
(Super.Ct.No. I 66097)
Filed April 1, 1994
Court of Appeal Fourth District

APPEAL from the Superior Court of Riverside County. Richard V. Lee, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Shapiro, Posell & Close, Jonathan J. Panzer, Karen L. Bizzini, and John D. Arya for Petitioner, Real Party in Interest and Appellant.

Charles A. Prawdzik for Real Parties in Interest, Petitioners and Appellants.

Rutan & Tucker, William W. Wynder and Layne H. Melzer for Respondent.

In these consolidated appeals, petitioner El Dorado Palm Springs, Ltd. (El Dorado) and real parties in interest Residents of El Dorado Mobile Home Park (Residents) appeal from rulings of the Riverside County Superior Court sustaining administrative actions by respondent Rent Review Commission of the City of Palm Springs (Commission).

In appeal E010773, El Dorado challenges the trial court's December 12, 1991, minute order denying El Dorado's motion for postjudgment enforcement of a December 8, 1989, peremptory writ of mandate. In the motion, El Dorado sought an order vacating the October 30, 1991, findings and decision of the Commission. In appeal E011072, El Dorado challenges the trial court's April 20, 1992, minute order denying El Dorado's petition for administrative mandate to correct alleged errors in the Commission's October 30, 1991, findings and decision. El Dorado contends that the trial court erred in sustaining the Commission's rulings on an administrative petition filed by the Residents because: (1) the Commission had no jurisdiction to hear the Residents' petition; (2) the Commission had clearly intended that a 1989 hardship rent increase be permanent; (3) the Commission misconstrued this court's opinion affirming the writ in an earlier appeal; (4) the Commission limited all of El Dorado's hardship rent increase, not just those portions related to debt service; (5) the Commission was unjustified in adopting a payment plan the Residents had not even

requested; (6) the Commission erred in failing to award interest on the hardship rent increase that was stayed during an earlier appeal; and (7) the Commission's ruling denied El Dorado a fair, just, and reasonable return on its investment.

In appeal E011103, the Residents challenge the April 20, 1992, minute order denying the Residents' petition for writ of mandate, challenging the Commission's October 30, 1991, findings and decision. The Residents contend: (1) the trial court erred in failing to issue a statement of decision as requested by the Residents; (2) the Commission exceeded its authority in granting El Dorado a rent increase to cover operating losses from previous years; (3) the Commission denied the Residents due process and a fair hearing by granting rent increases for previous years without conducting an evidentiary hearing; (4) the Commission's findings and decision are not supported by the facts; (5) by virtue of its "unclean hands", El Dorado is not entitled to benefit from its own wrong; and (6) El Dorado was unfairly attempting to collect accrued hardship rent increases from some current residents of the mobile home park who did not live there during the earlier proceedings in this case.

In responding to El Dorado's arguments, the Commission contends that: (1) the Commission's findings and decision of October 30, 1991, were consistent with the Commission's statutory and implied powers; (2) the Commission correctly interpreted and applied the teachings of this court in its opinion in an earlier appeal; (3) this court's earlier decision in *Palacio de Anza v. Palm Springs Rent Review Com.* (1989) 209 Cal.App.3d 116, was wrongly decided; (4) the Commission properly used its discretionary authority to grant the Residents the option to make time payments of accrued rents; and (5) the Commission acted reasonably and within its authority in limiting the duration of the hardship rent increase, including that portion attributable to

operating expenses other than debt service expense. In responding to the Residents' arguments, the Commission contends: (1) the Residents' due process argument is based on a mistaken interpretation of the facts; (2) the Residents' due process argument is barred by the failure to exhaust administrative remedies; (3) the Commission properly denied the Residents' request for restitution; and (4) the Commission has no jurisdiction to adjudicate individual landlord-tenant disputes.

We affirm the decision of the trial court.

FACTS

The Parties. El Dorado is the owner of the El Dorado Mobilehome Park, a mobile home residential park in Palm Springs. El Dorado leases individual spaces in the park to owners of mobile homes.

The Commission is a public administrative body organized and existing under Palm Springs Municipal Code section 4.08.070(a). Before April 27, 1990, the Commission was organized and existed under section 8(a) of Ordinance No. 1117 of the City of Palm Springs.

The Residents are owners of mobile homes who presently lease space from El Dorado in the El Dorado Mobilehome Park.

The Rent Control Laws. On April 8, 1980, the voters of the City of Palm Springs adopted an initiative measure entitled "Ordinance of the City of Palm Springs Limiting Rents on Residential Units" (the initiative measure). Among other things, the initiative measure established ceilings for residential rental charges.

On October 1, 1980, the City Council of the City (City Council) adopted Ordinance No. 1117 to amend and implement the initiative measure. Among other things, Ordinance

No. 1117 created the Commission and provided for hardship rent increases in specified circumstances.

On March 12, 1981, the Commission adopted procedural rules for the conduct of hearings on petitions for hardship rent increases. The procedural rules were revised on March 30, 1984.

On December 7, 1983, the City Council adopted Guidelines for Hardship Rent Increases (Guidelines). The Guidelines contain regulations for determining whether the Commission should grant hardship rent increases greater than the annual general rent increases.

On January 18, 1984, the City Council adopted Ordinance No. 1213. Ordinance No. 1213 restated and codified the initiative measure and Ordinance No. 1117, but did not change their substance.[1]

The initiative measure, Ordinance No. 1117, Ordinance No. 1213, the Guidelines, and the procedural rules are referred to collectively hereafter as the Rent Control Law.

Factual and Procedural Background. In April 1986, El Dorado purchased a mobile home park in Palm Springs. The purchase price for the mobile home park was $7,500,000, financed principally by two promissory notes: (1) a note for $5,400,000 payable to California Federal Savings, secured by a first priority deed of trust; and (2) a note for $1,960,000 payable to Century Properties Fund 71-3, secured by a second priority deed of trust. The Century Properties note required repayment in full in three years. The same month, El Dorado applied to the Commission for a hardship rent increase based on a 1986 year of application.

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[1]In April 1990, the voters of the City of Palm Springs adopted Palm Springs Municipal Code section 4.08.070 as part of an initiative measure. Municipal Code section 4.08.070 expressly superseded the 1980 ordinance.

When El Dorado filed its petition for hardship rent increase, section 101(c)(1)(xii) of the Guidelines allowed certain purchase money debt service costs to be included as an allowable operating expense in calculating a landlord's net operating income. This provision of the Guidelines is hereafter referred to as the debt service cost pass-through guideline.[2] However, on December 15, 1986, the City repealed the debt service cost pass-through guideline, eliminating debt service expense as an allowable expense under the rent control laws.

After hearings which concluded on July 18, 1988, on October 17, 1988, the Commission issued findings. Pursuant to the findings, the Commission granted El Dorado a hardship rent increase of $65.17 per mobile home space per month "until further order of [the] Commission." That amount was about 30 percent of the amount El Dorado had requested in its petition. That amount represented $41.44 for nondebt service expenses and $23.73 for debt service expenses. Based on the repeal of the debt service cost pass-through guideline, the Commission disallowed most of the debt service expenses claimed by El Dorado.

On March 3, 1989, this court issued its opinion in *Palacio de Anza v. Palm Springs Rent Review Com., supra*, 209 Cal.App.3d 116. This court held that a Palm Springs landlord, who purchased property in reliance upon the debt service cost pass-through guideline, had a vested right to include debt service expense in proceedings before the Commission for a hardship rent increase. (*Id.*, at p. 120.)

On May 22, 1989, El Dorado filed a petition in the superior court for a writ of mandate seeking to require the

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[2]The debt service cost pass-through guideline defined purchase money financing to include, among other things, "loans made by the owner to pay unamortized or balloon principal payments of the principal price." (Guidelines, § 101(c)(1) (xiii).)

Commission to grant the entire amount of the rent increase requested, despite the repeal of the debt service cost pass-through guideline. In 1989, the trial court granted the petition and issued a peremptory writ of mandate directing that the Commission supplement the hardship rent increase by an additional $114.29 per space per month. That amount represented $10.23 for nondebt service expenses and $104.06 for debt service expenses. The writ of mandate authorized collection of this additional hardship rent increase after March 1, 1990.

Meanwhile, on March 22, 1989, El Dorado refinanced its entire purchase money mortgage debt by executing a new note for $8,650,000 secured by a first priority deed of trust. The Century Properties note had become due, and El Dorado was unable to find a lender willing to refinance a secured note in second position behind a first position secured note with a variable rate of interest. The proceeds from the new note were used to pay off the original purchase money notes. However, the amount refinanced exceeded the actual purchase price for the park.

The Residents appealed the writ of mandate to this court. (*El Dorado Palm Springs, Ltd. v. Rent Review Com.* (May 20, 1991, E007483) pub. in pt. at 230 Cal.App.3d 335, hereafter *El Dorado I.*) Collection of the additional monthly hardship rent increase of $114.29 was stayed pending appeal. Among other things, this court confirmed El Dorado's right to have its hardship rent increase petition determined under provisions of the Rent Control Laws on which El Dorado had relied when it purchased the mobile home park. Those provisions gave El Dorado the right to pass through to the Residents in the form of a hardship rent

increase the majority of purchase money financing costs incurred in operating the mobile home park.[3]

This court's opinion also contained the following language: "(1) *Palacio* does *not* stand for the proposition that any landlord holding rental properties within the city which were purchased with a loan predating the repeal of section 101(c)(1)(xii) is entitled to apply for a debt service cost 'pass through' rent increase. *Palacio* applies only to debt service costs incidental to rental property purchase loans which were initially 'assumed' or 'undertaken' during that relatively short period of time while section 101(c)(1)(xii) was in effect. (*Palacio, supra,* 209 Cal.App.3d at p. 120.)

"(2) Consistent with the immediately preceding comment, *Palacio* does *not* apply to any 'refinancing' which is carried out following the repeal date of section 101(c)(1)(xii). Any such refinanced debt burden would have been 'assumed' *after* section 101(c)(1)(xii) ceased to be effective." (*El Dorado I,* typed opn. at p. 26.)

The California Supreme Court declined to review the decision of this court in *El Dorado I.* On September 5, 1991, this court issued its remittitur, and the trial court reacquired jurisdiction. The writ of mandate then became final and enforceable. On October 8, 1991, the Commission entered amended findings implementing the mandatory requirements of the writ of mandate. On October 10, 1991, the Commission made a return on the writ of mandate to the trial court.

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[3]This portion of our decision was based on our earlier case which had construed the same rent control law. (*Palacio de Anza v. Palm Springs Rent Review Com., supra,* 209 Cal.App.3d 116.) Specifically, in *Palacio de Anza,* we held that the repeal of section 101(c)(1)(xii) of the Guidelines could not be applied retroactively to landlords who had undertaken property financing in reliance on the then-existing law. (*Id.* at pp. 120-121.)

Meanwhile, in July 1991, El Dorado notified the Residents of El Dorado's intent to begin collecting the rent increases ordered under the writ. Specifically, El Dorado notified the Residents that on October 1, 1991, it would begin collection of $2,352.47 per space, representing accrued rents of $2,171.51 authorized by the writ (at $114.29 per month from and after March 1, 1990, through September 30, 1991) and interest at 10 percent annually. El Dorado informed the Residents it would spread these lump sum payments over three months, at $797.26 per month.[4]

In addition, El Dorado informed the Residents that they were henceforth obligated to pay the additional $114.29 per space per month under the terms of the writ of mandate. El Dorado maintained that this increase, along with the previously ordered $65.17 per space per month increase (which the Residents had been paying since October 1988) was a *permanent* hardship rent increase.

The Residents, most of whom are elderly retirees living on fixed incomes, faced substantial economic hardship from the lump sum payment and the monthly hardship rent increase. On September 5, 1991, the Residents filed an administrative petition with the Commission. The Residents' petition, entitled "Petition by Tenants of El Dorado Mobilehome Park for Interpretation and/or Review of Landlord's Actions or Proposed Actions in re: 'Notice of Rent Increase in Amount of $114.29/Month-Plus' " (hereafter, the Residents' administrative petition) sought a "further order" of the Commission limiting the duration of the hardship rent increase in light of changed circumstances. The Residents alleged that

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[4]During the pendency of the appeal in *El Dorado I*, the residents obtained a stay of enforcement of the writ. Nineteen months elapsed before the trial court reacquired jurisdiction to enforce the writ. The residents were then 19 months in arrears in payment of the additional increases of $114.29 per space ordered in the writ and affirmed in *El Dorado I*.

on March 22, 1989, El Dorado had refinanced its debt for the purchase of the mobile home park, and under *Palacio*, El Dorado was no longer entitled to pass through the debt service cost to the tenants in the form of a hardship rent increase.

The Residents sought a refund of all payments sought or received by El Dorado under its hardship petition after the date of its refinancing. In addition, the Residents sought an order relieving them of any obligation to pay the court-ordered $114.29 hardship rent increase, including the $2,171.51 per space which had accrued since March 1989.

The Commission held a hearing to determine whether it had jurisdiction to entertain the Residents' administrative petition. The Commission concluded it did have such jurisdiction. The Commission then held a hearing on the merits of the petition on October 30, 1991.

El Dorado filed a writ petition on October 6, 1991, directly with this court seeking an emergency stay of the Commission's action. El Dorado contended that the Commission lacked jurisdiction to act upon the Residents' administrative petition. This court summarily denied the writ and request for stay.

The Commission issued findings and decision on October 30, 1991. The Commission: (1) denied the Residents' request for a refund of any rents paid incident to the original hardship petition, (2) denied the Residents' request to be relieved of any obligation to pay accrued rents from March 1990 to September 1991; (3) limited the duration of El Dorado's hardship rent increase to three years and three months, specifying that the increase was to terminate on June 1, 1993; and (4) authorized the Residents to pay the past due amounts of the hardship rental increase, i.e., amounts due from March 1, 1990 totalling $2,171.51 per resident, in 36 equal monthly installments of $70.07, with

interest of 10 percent on the unpaid balance. The Commission did not include interest on the accrued rent during the time the stay was in effect.

El Dorado moved for postjudgment enforcement of the writ of mandate in *El Dorado I*, seeking to set aside the Commission's findings and decision. The trial court denied the motion.

El Dorado thereafter filed a petition for writ of mandate to challenge the Commission's October 30, 1991, findings and decision on both substantive and procedural grounds.[5] The Residents filed a separate petition for writ of mandate to challenge other portions of the Commission's findings and decision. The writ petitions of El Dorado and the Residents were ordered consolidated for purposes of briefing and hearing. The trial court denied both writ petitions and affirmed the findings and decision of the Commission. Both El Dorado and the Residents have appealed.

DISCUSSION

El Dorado's Appeals

El Dorado contends the trial court erred in sustaining the Commission's rulings on the Residents' administrative petition.

Commission's Jurisdiction to Hear Residents' Administrative Petition. El Dorado contends the Commission lacked

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[5] El Dorado points out that the residents failed to file an answer or demurrer to El Dorado's writ petition. A return by "demurrer, verified answer or both" was required. (Code Civ. Proc., §§ 1089, 1089.5; *Central Bank v. Superior Court* (1978) 81 Cal.App.3d 592, 600.) Accordingly, El Dorado argues, the residents must be deemed to have admitted all of the allegations of the petition, and the residents' responding brief in these consolidated appeals should not be considered. We agree, and we have not considered the residents' responding brief filed on September 24, 1992, in deciding these consolidated appeals.

jurisdiction to hear the Residents' administrative petition on its merits. El Dorado's attack on the Commission's jurisdiction is multipronged. El Dorado contends: (1) the Commission may not review or reconsider its prior final administrative decisions; (2) the Commission has no authority to exercise continuing jurisdiction over hardship rent increase awards or otherwise to reserve jurisdiction to change the terms of such awards; (3) the authorizing legislation does not give the Commission power to grant a hardship rent increase of indefinite duration or to make the duration of a hardship rent increase subject to further order; (4) the Commission's purported award of a hardship rent increase of indeterminate duration has no legal effect; and (5) the Commission has no jurisdiction to act on petitions of tenants or other interested persons to decrease the amount or duration of a previously awarded hardship rent increase. To simplify the discussion, we have combined some of these closely related contentions.

The Commission's findings and decision dated October 17, 1988, in *El Dorado I* granted El Dorado a hardship rent increase "until further order of the Commission." However, El Dorado contends that under Municipal Code 4.08.070(f)(3), formerly section 4.04.050(e),[6] the Commission had no power to grant a hardship rent increase of

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[6]Palm Springs Municipal Code section 4.08.070 states, "(f) *Powers and Duties of the Commission.* Within the limitations provided by law, the rent review commission shall have the following powers and duties:

". . . . . .

"(3) To receive, investigate, hear and determine petitions of landlords for hardship adjustment of rent pursuant to Section 4.08.060. *Increases may be granted for a stated period of time or permanently.* Such adjustments may take the form of a redetermination of base rent, a surcharge of a given dollar or percentage amount, a separate charge for utility or other services, or such other form as the commission shall find most appropriate." (Emphasis added.)

indeterminate duration.[7] El Dorado further asserts that because the rent increase was not limited to a stated period of time, it was necessarily a permanent increase under the Commission's authorizing legislation.

"Administrative agencies 'have only such powers as have been conferred on them, expressly or by implication, by constitution or statute.' [Citations.] 'An administrative agency, therefore, must act within the powers conferred upon it by law and may not validly act in excess of such powers. [Citations.]' [Citation.] Accordingly, it is well settled that 'when an administrative agency acts in excess of, or in violation, of the powers conferred upon it, its action thus taken is void. [Citations.]' " (*City and County of San Francisco v. Padilla* (1972) 23 Cal.App.3d 388, 400.)

Subject matter jurisdiction is defined broadly as "the power to hear or determine" the case. (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288.) A court, and by parity of reasoning, an administrative agency exercising adjudicatory powers with subject matter jurisdiction may nevertheless lack authority to take certain steps or grant certain kinds of relief. (*Abelleira, supra*, 17 Cal.2d at p. 288-291.) "Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of *stare decisis,* are in excess of jurisdiction, in so far as that term is used to indicate that those acts may be restrained by prohibition or annulled on *certiorari.*" (*Id.*, at p. 291.) If the court grants some relief which the

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[7]Municipal Code section 4.08.070(f)(3) was amended in July 1991 to clarify that "Any hardship rent increase granted shall be limited to that period of time necessary to alleviate any demonstrated hardship." As amended, this section now establishes a presumption that a hardship rent increase shall be limited in duration to one year.

court had no power to grant, the judgment may be void in part.

Under its enabling legislation, the Commission had only two choices in granting a hardship rent increase: (1) to issue a hardship rent increase of limited duration, or (2) to issue a permanent hardship rent increase. The Commission did not have power to grant a hardship rent increase of indefinite duration.

However, the consequences of the Commission's lack of jurisdiction are not favorable to El Dorado's position. It does not follow, as El Dorado urges, that the hardship rent increase was necessarily permanent. Rather, because the Commission lacked subject matter jurisdiction, its findings and decision are *void* to the extent the Commission attempted to issue a hardship rent increase of indefinite duration. (See, e.g., *City and County of San Francisco v. Padilla, supra*, 23 Cal.App.3d at p. 400.)

Thus, the issue of the duration of the hardship rent increase was not determined in the original administrative proceedings, and the Commission had jurisdiction to later enter an order granting a hardship rent increase which conformed to one of the two available options within the Commission's powers.

Because we determine that the Commission had jurisdiction to enter an order within the scope of its power when its original order was void, we need not address El Dorado's other jurisdictional challenges at any length. Doctrines of collateral estoppel and res judicata do not bar challenges to an order beyond the jurisdiction of an administrative agency. (*City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 679; *City and County of San Francisco v. Padilla, supra*, 23 Cal.App.3d at pp. 400-401.) Thus, the Residents' failure to challenge the duration of the hardship

rent increase in *El Dorado I* is of no significance.[8] Furthermore, because the portion of the Commission's order purporting to grant a hardship rent increase of indefinite duration was *void*, there was no final decision of the Commission on that issue. The Commission never lost jurisdiction to make a proper determination; thus, the Commission's power to review its own final decisions did not come into play.

Permanency of Rent Increase. As an alternative to its jurisdictional argument, El Dorado contends the Commission had originally intended that the hardship rent increase be permanent, and therefore the Commission erred in later limiting the rent increase to a period of three years and three months. El Dorado notes that the phrase, "until further order of [the] Commission" was routinely included in all findings and decisions of the Commission; thus, El Dorado argues, such language should be deemed to be surplusage and boilerplate, having no force or effect in law. Contrary to El Dorado's position, we presume that the Commission intended exactly what it said, rather than the direct opposite, even if the Commission regularly used the same language in its decisions.

El Dorado next refers to discussion among Commission members during deliberations leading to the original findings. During those deliberations, certain members made statements that El Dorado construes as indicating an intent on the part of the Commission that the hardship rent increase be granted permanently.

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[8]We do observe, however, that if the principles of collateral estoppel and res judicata did apply, they would apply against El Dorado, not the Residents, since it is El Dorado who complains about the Commission's grant of a hardship rent increase of indefinite duration. (See *California Coastal Com. v. Superior Court* (1989) 210 Cal.App.3d 1488, 1493-1497.)

When an administrative body acts, the effect of its actions is not to be judged or interpreted based on the views of any individual member of that body. (*Board of Administration v. Superior Court* (1975) 50 Cal.App.3d 314, 319-323.) Instead, the legal import of the actions of the administrative body is to be determined from the actual findings and decisions made, particularly when, as here, the body is required to reduce its action to written findings. (*Id.*, at p. 320.)

Thus, even if El Dorado's selective citations from the minutes of the Commission establish statements or opinions of individual members, the intent of the entire Commission, acting as a committee of the whole, is reflected only in the written findings and decision ultimately entered by the Commission. (See, e.g., Muni. Code, § 4.08.080, which provides that "findings and decisions of the Commission shall be final administrative action.")

We find no indication in the original findings that the Commission intended the hardship rent increase to be permanent. On the contrary, the express language of the findings states that the rent increase is to take effect only "until further order of [the] Commission." As discussed above, this portion of the Commission's findings and decision was void, and the Commission acted properly in entering a new decision limiting the hardship rent increase to a period of definite duration.

Interpretation of This Court's Decision in El Dorado I. El Dorado next contends that in its October 30, 1991, rulings and decision, the Commission misconstrued this court's opinion in *El Dorado I* affirming the writ of mandate. Specifically, El Dorado argues that the language in this court's earlier opinion concerning the effect of *Palacio* (see *ante* at p. 8) was merely dicta, and this court did not intend such language to apply to El Dorado's March 1989 refinancing. El Dorado is mistaken; the Commission's October 30,

1991, rulings and decision are fully consistent with the language and intent of this court's decision, in *El Dorado I.*

Hardship Increase Not Related to Debt Service. In its October 30, 1991, findings and decision, the Commission limited the duration of the entire hardship rent increase, not just the portion related to debt service. In their administrative petition, the Residents did not challenge the portion of the hardship rent increase that was not related to debt service. El Dorado contends the Commission's action was erroneous, in that the Commission awarded relief beyond that requested by the Residents, and no evidence supported the Commission's decision to limit the duration of the remaining portion of the hardship rent increase.

The Commission responds that the Commission has express statutory authority to structure the character, kind, and duration of any hardship rent increase it authorizes. (Mun. Code, § 4.08.070(f)(3).) The Commission points out that its order with respect to that portion of the hardship rent increase attributable to operating expenses other than debt service expense is interlocutory, and El Dorado is entitled to bring a subsequent petition or to seek a further order demonstrating that the operating expenses portion of the hardship rent increase has continued beyond the present rollback date of June 1993.

We conclude the Commission had jurisdiction to set the duration of the remaining portion of the hardship rent increase, because its original order did not do so. As pointed out above, the Commission could only order a permanent hardship rent increase or order one of limited duration. The duration of the hardship rent increase was left open in the original findings and decision, and the Commission therefore acted appropriately in setting a time limit on the remaining portion of the hardship rent increase, without prejudice to El Dorado's right to bring a new petition based on continuing hardship.

Payment Plan. El Dorado contends the Commission erred in establishing a 36-month payment plan for the Residents to pay the hardship rent increase that accrued during the pendency of legal proceedings when the increase was stayed. El Dorado notes that the Residents did not even request such relief, and urges that the Commission was without authority to act on its own initiative.

Palm Springs Municipal Code section 4.08.070(f)(2) grants the Commission continuing jurisdiction to "receive, hear and determine petitions or other requests of tenants . . . for interpretations of the ordinance or for review of a landlord's actions or proposed actions pursuant to the chapter." In establishing the payment plan, the Commission explained that it relied on its express and inherent authority to "apportion or 'spread' . . . lump-sum payments . . . demanded by [a] Landlord over a sufficient period of time in order to mitigate any potential financial hardship inflicted thereby."

El Dorado argues, however, that the Commission's express or implied authority to apportion hardship rent payments does not apply to a previously granted award. When the Commission acts to apportion payments on a petition for hardship rent increase that has already become final, El Dorado argues, the Commission improperly exercises quasi-appellate or review powers exceeding the scope of its authority.

When an agency is engaged in adjudication and does not have review powers implied in its authorizing legislation, the doctrine of res judicata applies and the agency is without jurisdiction to reopen a matter on which a decision has been rendered. (*Hollywood Circle, Inc. v. Dept. of Alcoholic Beverage Control* (1961) 55 Cal.2d 728, 732-733.) "[I]n the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once its decision has become

final. [citation.]" (*Save Oxnard Shores v. California Coastal Com.* (1986) 179 Cal.App.3d 140, 149-150.) Other courts have stated the rule as follows: "[S]ince all administrative action must be grounded in statutory authority, in the absence of a provision allowing a commission to change its determination, courts have usually denied the right to do so." (*Olive Proration, etc., Com. v. Agri. etc., Com.* (1941) 17 Cal.2d 204, 209; see also *Four Seas Investment Corp. v. Board of Permit Appeals* (1978) 85 Cal.App.3d 526, 531.) The rent control law states that the Commission, in rendering a decision on a hardship increase petition, shall make a "final decision", and any party not satisfied with that decision must seek judicial remedies, there being "no appeal, as such, from a final determination of the Commission."

Here, however, the issue was properly before the Commission on several bases. First, as discussed above, the original findings and decisions failed to determine the issue of the duration of the hardship rent increase. The Commission had authority to make that determination in the present proceedings.

Second, the Commission had before it new facts and evidence, specifically, El Dorado's refinancing of the purchase money loan and the extraordinary hardship to the Residents based on the stay of the additional hardship rent increase during the appeal in *El Dorado I*. The Commission was entitled to take that new evidence into account in the current proceedings.

Thus, we find no error in the Commission's action allowing the Residents to make time payments of the accrued hardship rent increase.

Denial of Interest on Past Due Amounts. El Dorado complains that the payment plan unlawfully denied El Dorado interest on the past due amounts. Although the payment plan granted interest from and after October 1991,

it omitted interest for the previous 19-month period while the stay was in effect. El Dorado contends it was entitled to interest on the past due hardship rent increase between March 1990 and October 1991.

El Dorado has failed to support its position with any citation to authority. We therefore deem the argument abandoned. (*Schultz v. Steinberg* (1960) 182 Cal.App.2d 134, 137.)

Denial of Fair Return. El Dorado contends the Commission's actions deprived it of a fair and reasonable return on its investment. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129.) El Dorado requested the Commission to take official notice of all pleadings and papers relating to the writ proceeding, including the administrative record filed in that proceeding. El Dorado claims it presented undisputed evidence that during 1986 and thereafter, it suffered continuing losses from operation of the mobile home park. El Dorado contends that by limiting the duration of the hardship rent increase, the Commission has unconstitutionally deprived El Dorado of a fair, just, and reasonable return on its investment.

The Guidelines state, "It is the intent of this Regulation to permit rents to be established at a level which will provide landlords with a fair return on their property, consistent with the Rent Control Ordinance and the Law and Constitution of the State of California."

El Dorado has not presented any record on appeal sufficient for us to reach the issue. Despite its "undisputed" evidence of operating losses since 1986, El Dorado has not shown that it has exhausted its administrative remedies by filing petitions for hardship rent increases after 1986. Thus, we do not reach the issue of a reasonable return on investment.

The Residents' Appeal

Failure to Issue Statement of Decision. The Residents complain that the trial court erred in failing to issue a statement of decision, even though they timely requested a statement of decision on March 23, 1992. (Code Civ. Proc., § 632;[9] see also Cal. Rules of Court, rule 232.) The matter was heard on March 27, 1992, and the trial court issued its minute order on April 20, 1992. However, the trial court did not issue a statement of decision.

Code of Civil Procedure section 632, by its own terms, applies only to the trial of a question of fact. Here, the facts were essentially undisputed.[10] Therefore, the trial court was not obligated to issue a statement of decision even if the

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[9]"In superior, municipal, and justice courts, upon the trail of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal bases for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision. The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. After a party has requested such a statement, any party may make proposals as to the content of the statement of decision.

"The statement of decision shall be in writing, unless the parties appearing at trial agree otherwise; however, when the trial is concluded within one calendar day or in less than 8 hours over more than one day, the statement of decision may be made orally on the record in the presence of the parties." (Code Civ. Proc., § 632.)

[10]At the consolidated hearing on the writ petitions, counsel for the Commission pointed out that there were no facts in dispute, and no statement of decision was required. Counsel for El Dorado asserted that it was an issue of fact as well as of law whether the 1989 refinancing was prohibited. Counsel for the residents did not respond.

Residents' request was timely. (*Alford v. Pierno* (1972) 27 Cal.App.3d 682, 693.) There was no error.

Increase for Previous Years' Operating Losses. The Residents argue that the Commission exceeded its authority and deprived them of due process because its action in effect granted El Dorado a rent increase to cover previous years' operating losses, even though no evidentiary hearing was conducted to determine the amount of such losses. In a related argument, the Residents contend that the Commission's action was not supported by the facts.

When the Commission granted El Dorado a hardship rent increase in September 1988, it ordered the increase prospectively, to begin in October 1988. However, the Residents complain that in its October 30, 1991, findings and decision, the Commission ordered a rent increase to cover hardship incurred in 1986, 1987, 1988, and the first three months of 1989. The Commission's action was premised on the notion that El Dorado was entitled to recover all of its debt service cost from the year of its application for a hardship rent increase through the date of refinancing in March 1989.[11] The Residents contend this ruling was expressly forbidden by the rent control law, and the Commission therefore exceeded its authority.[12] The Residents further argue that if

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In its request for a statement of decision, counsel for the residents specified 11 controverted issues. Those issues relate to the interpretation of the rent control law, and as such, are issues of law, not of fact.

[11] The Commission based its award of a hardship rent increase on 12 months of debt service cost in 1986, even though El Dorado did not purchase the mobile home park until April 1986.

[12] Section 4.04.050(4) of the 1980 ordinance and section 4.08.070(f)(4) of the current ordinance provide, "All decisions of the commission shall be prospective, not retrospective, in operation and application. The commission shall have no power or authority to authorize any landlord to impose retroactively any increase in rent." Similarly, section 108 of the guidelines states, "In no event shall

a landlord fails to seek a timely rent adjustment, the landlord permanently loses the right to obtain a hardship rent increase based on past events. (See *Searle v. City of Berkeley Rent Stabilization Bd.* (1988) 197 Cal.App.3d 1251, 1255.)

The Residents fail to distinguish between a retroactive rent increase and a prospective rent increase to remedy a past hardship. Although the Commission is prohibited from granting the former, nothing in the Rent Control Laws prevents the Commission from granting the latter. Indeed, under the Rent Control Laws, a prospective rent increase to remedy a past hardship is the only way the ordinance can function because under the guidelines, the Commission is obligated to base the rent increase on the actual expense figures for the year of application. The actual operating expense figures are not available until after the year has passed. The rent increase granted in the original proceeding was based on 1986 income and expenses, even though the increase was not granted until 1988.

We conclude the Commission did not impose an illegal retroactive rent increase when it fixed the time period for the hardship rent increase at three years and three months based on losses in 1986, 1987, 1988, and part of 1989.

The Residents next contend that the Commission's decision to impose a three year and three month hardship rent increase was not supported by the record. However, in the original administrative proceeding, El Dorado established its operating expenses and income. New evidence presented to the Commission established that in March 1989, El Dorado had refinanced its purchase money loan, and El Dorado was therefore no longer eligible to obtain a hardship rent in-

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retroactive rent increases be authorized by application of this Regulation, except as permitted by the Rent Control Ordinance or by other duly adopted regulation of the commission."

crease based on its purchase money cost. This evidence supports the Commission's findings and decision with respect to the duration of the hardship rent increase.

Collateral Estoppel. The Residents next argue that collateral estoppel prevents El Dorado from recovering hardship losses for the period before the Commission granted the rent increase in September 1988. In another case in this court, *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (Mar 10, 1992) E007861/E008391 (hereafter referred to as *El Dorado II*), El Dorado appealed from the trial court's sustaining of demurrers without leave to amend. El Dorado had filed suit against individual residents of the mobile home-park seeking restitution. El Dorado alleged that those residents had been unjustly enriched because the rent control law enabled them to pay restricted or controlled rents during the years from 1986 to 1990. This court affirmed the trial court's ruling that El Dorado was not entitled to restitution from the residents because the residents were paying the rental rates as fixed by the law and approved by the Commission. This court stated, "We conclude as a matter of law that paying rentals required by local ordinance is not an unjust action giving rise to a claim for restitution, and a tenant who pays a legal rental under a local ordinance has not been unjustly enriched. As a matter of public policy, logic, and common sense, there can be no cause of action against one who benefits from the enactment and enforcement of a law, at least under the circumstances pleaded in the complaint." (*El Dorado II, supra,* typed opn. at p. 17.)

The Residents claim that the Commission's award, in effect granting El Dorado "back rent" for the period from 1986 through March 1989, gave the landlord what this court had previously denied. El Dorado contends this position amounts to an improper collateral attack on the Commission's earlier findings and decision imposing a rent increase.

We disagree. In *El Dorado II*, El Dorado sought to recover damages from the Residents over and above the fair rent established by the Commission. Here, El Dorado seeks to collect such rent based on the Commission's action. The fact that the rent may include recovery for hardship losses for a period which overlaps that for which El Dorado sought to recover restitution does not make the Commission's action inconsistent with our decision in *El Dorado II*. The dispositive factor is that the Commission has established the fair rent for the Residents' occupancy of spaces in the mobile home park.

Unclean Hands. The Residents argue that El Dorado should not be permitted to profit from its own wrongdoing, and its unclean hands should prevent it from obtaining the relief it sought in its motion and petition for writ of mandate. Specifically, the Residents charge that El Dorado concealed the fact that it had refinanced its loans for the purchase of the mobile home park in March 1989, even though that fact was relevant to the ongoing review of the Commission's 1988 award of a rent increase.

The Residents have not pointed to any provision of the Rent Control Laws that would have required El Dorado to report promptly its refinancing of its purchase money loans. We find no basis for applying the unclean hands doctrine in this case.

Hardship Increases Applied to Specific Tenants. The Residents appear to argue that the Commission was required not only to determine the duration of the previously ordered hardship rent increases, but also to determine which specific tenants are obligated to pay such increases. As the Residents point out, many of the current residents at the mobile home park have moved there since 1986 and were not parties to the proceedings in *El Dorado I*, and it would be inherently inequitable to require them to pay hardship

rent increase that accrued while they were not even tenants of the mobile home park.

The rent control law does not empower the Commission to intervene in individual landlord-tenant disputes. Thus, the issue is not properly before us in this appeal.

DISPOSITION

The orders appealed from are affirmed. Each party shall bear its own costs on appeal.

NOT FOR PUBLICATION

/s/ Dabney
Acting P. J.

We concur:

/s/ Hollenhorst
J.

/s/ Bigelow
J.*

* Retired judge of the superior court sitting under assignment by the Chairperson of the Judicial Council.

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.:

I am employed in the county of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2029 Century Park East, Suite 2600, Los Angeles, California.

On May 11, 1993, I served the foregoing document described as

PETITION FOR REVIEW OF DECISION OF THE COURT OF APPEAL FOURTH APPELLATE DISTRICT DIVISION TWO

on interested parties in this action by placing a true COPY thereof enclosed in sealed envelopes addressed as follows:

Charles A. Prawdzik, Esq.
75-780 Temple Lane
Palm Desert, California 92260

William W. Wynder, Esq.
Rutan & Tucker
P.O. Box 1950
Costa Mesa, CA 92628-1950

Riverside County Superior Court
4050 Main Street
Riverside, California 92501

California Courts of Appeal
Fourth Appellate District
Division Two
303 W. 5th Street
San Bernardino, CA 92401-1345

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be posted with U. S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on May 11, 1993, at Los Angeles, California.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

GINA HENDERSON

APPENDIX 2

BEST AVAILABLE COPY

APPENDIX 2

BEFORE THE RENT REVIEW COMMISSION OF THE CITY OF PALM SPRINGS

In the matter of EL DORADO PALM SPRINGS, LTD., a Limited Partnership, d/b/a EL DORADO MOBILE HOME PARK (El Dorado I).	FINDINGS & DECISION ON PETITION OF RESIDENTS, FILED SEPTEMBER 5, 1991

WHEREAS, on September 5, 1991, Petitioners, residents of El Dorado Mobile Home Park and the El Dorado Mobile Home Park Homeowners Association (simply "Residents"), filed with this Commission a Petition, pursuant to Section 4.08.070(f)(2) of the Palm Springs Municipal Code, seeking the issuance of a further order from the Commission, as well as the interpretation of certain conduct of Respondent, El Dorado Palm Springs, Ltd. (simply "Landlord"), in connection with the hardship rent increase of $179.46 ordered, in part, by this Commission and, in part, by the Riverside County Superior Court, affirmed, with comment, by the Court of Appeal, Fourth Appellate District (simply "El Dorado I"); and

WHEREAS, this Petition came on regularly for hearing commencing on September 16, 1991 and continuing thereafter until October 30, 1991; and

WHEREAS, Residents appeared by and through their attorney, Charles A. Prawdzik of Charles A. Prawdsik, a Professional Corporation, and Landlord appeared by and through its attorney, Jonathan Panzer of Shapiro, Posell & Close;

NOW, THEREFORE, BE IT RESOLVED, after careful review and consideration of the Petition on file herein, all exhibits admitted into evidence offered by the parties hereto, the testimony of the witnesses for the parties, the oral

argument of counsel, and the legal argument of the parties (as set forth in their respective briefs), and having also considered this Commission's administrative record in El Dorado I and II, the Rent Review Commission for the City of Palm Springs, makes the following findings:

1. The City of Palm Springs has been subject to rent control regulation since April, 1980. An express purpose of the Rent Control Ordinance is to protect Residents from excessive increases in rents.

2. In or around April, 1986, in reliance upon certain rent control guidelines then in effect (one of which allowed purchase money debt service cost to be included as an allowable operating expense in calculating a permissible hardship rent increase [simply the "debt service pass-through guideline"]), Landlord purchased El Dorado Mobile Home Park (the "Park") which is the subject of the instant Petition. Landlord purchased the Park for approximately $7,500,000. This purchase was financed principally by two promissory notes: (1) a note for $5,400,000, payable to California Federal Savings, secured by a first priority deed of trust, and (2) a note for $1,960,000, payable to Century Properties Fund 71-3, secured by a second priority deed of trust.

3. In or around April, 1986, Landlord commenced proceedings before this Commission seeking a hardship rent increase based on a 1986 year of application and referred to as "El Dorado I."

4. In or around December, 1986, the City Council of the City of Palm Springs repealed the debt service pass-through guideline, thereby eliminating debt service expense as an allowable expense under the Rent Control Ordinance.

5. In or around October, 1988, this Commission issued its Findings and Decision in El Dorado I, authorizing a per unit hardship rent increase of $65.17 until further order of

the Commission. In so doing, however, this Commission disallowed substantially all of the debt service expense claimed by Landlord based on the repeal of the debt service pass-through guideline.

6. In 1989, the Fourth District Court of Appeal issued its opinion in *Palacio De Anza vs. Palm Springs Rent Review Commission* (1988) 109 Cal.App.3d 1161, holding that a landlord who purchased rental property in reliance upon the debt service pass-through guideline had a "vested property right" to continue to include debt service expense in proceedings before this Commission for hardship rent increases.

7. In or around March, 1989, Landlord refinanced its entire purchase money mortgage debt by executing a new note for some $8,650,000, secured by a first priority deed of trust on the Park. The amount financed was in excess of the actual purchase price for the Park.

8. In or around May, 1989, relying upon the decision in *Palacio*, Landlord successfully challenged the hardship rent increase awarded by this Commission in El Dorado I. In or around December, 1989, a Writ of Mandate was issued by the Riverside County Superior Court requiring this Commission to amend and restate its Findings and Decision in El Dorado I to reinstate $578,142 of purchase money debt service expense as an allowable operating expense.

9. The Writ of Mandate issued by the Superior Court further ordered the Commission to amend and restate its Findings and Decision to permit an additional hardship rent increase of $114.29 for a total authorized hardship rent increase in El Dorado I of $179.46 per unit.

10. The Writ of Mandate issued by the Superior Court authorized collection of the additional hardship rent increase from and after March, 1990. That Court did not, however, alter those portions of this Commission's Findings and Decision which limited the duration of the authorized

(or court-ordered) hardship rent increase "until further order of this Commission."

11. Residents (with *amicus* support from this Commission) appealed the Writ of Mandate to the California Court of Appeal, Fourth Appellate District. As a result, implementation of the Writ of Mandate was stayed pending appeal. Hence, no payments were made by Residents pursuant to the Writ of Mandate.

12. The Writ of Mandate was affirmed by the California Court of Appeal, Fourth Appellate District, in *El Dorado Palm Springs, Ltd. v. Rent Review Commission* (1991) 230 Cal.App.3d 335. The California Supreme Court subsequently declined to review the decision of the Court of Appeal.

13. In September, 1991, the Writ of Mandate became final and enforceable. On October 8, 1991, this Commission entered its Amended and Restated Findings and Decision, thereby implementing the mandatory requirements of the Writ of Mandate. On October 10, 1991, this Commission made its return on the Writ of Mandate to the Superior Court.

14. This, however, does not end the matter before us. Specifically, in El Dorado I (as amended and restated pursuant to court order) we retained, and the Superior and Appellate Court affirmed, continuing jurisdiction and authority to issue such "further order" as may be just or required. In addition, the Writ of Mandate itself specifically commanded that we take such further action as is required by law.

15. Significantly, the Fourth District Court of Appeal, in an unpublished portion of its decision in El Dorado I, ruled as follows:

> (1) *Palacio* does *not* stand for the proposition that any landlord holding rental properties within the city which

were purchased with a loan predating the repeal of section 101(c)(1)(xii) is entitled to apply for a debt service cost "pass through" rent increase. *Palacio* applies only to debt service costs incidental to rental property purchase loans which were initially "assumed" or "undertaken" during that relatively short period of time while section 101(c)(1)(xii) was in effect. (*Palacio, supra*, 209 Cal.App.3d at p. 120.)

(2) Consistent with the immediately preceding comment, *Palacio* does *not* apply to any "refinancing" which is carried out following the repeal date of Section 101(c)(1(xii). Any such refinanced debt burden would have been "assumed" *after* Section 101(c)(1)(xii) ceased to be effective.

16. As noted, neither the Superior Court, nor the Appellate Court, did anything to alter that portion of this commission's original or amended Findings and Decision in El Dorado I which limited the duration of the authorized hardship rent increase until further order of this Commission.

17. In or around July, 1991, Residents received notice from Landlord that, commencing on October 1, 1991, Landlord would begin collection of approximately $2,171.51 in back rent due and owing from March, 1990, pursuant to the Superior Court Writ of Mandate, including interest at 10%.

18. Landlord advised Residents that it would commence collection of $114.29 as of October 1, 1991, which, in conjunction with the $65.17 originally awarded by this Commission, represented a $179.46 rent increase per unit. Landlord further advised Residents that it intended to collect the previously accrued $2,171.51 lump-sum rental increase (simply the "lump-sum payments") in three (3) monthly installments of $797.25.

19. Most Residents of the Park are elderly. Many Residents live on fixed incomes. The lump-sum payments requested by Landlord would, in the judgment of this Commission, constitute a substantial financial hardship upon Residents.

NOW, THEREFORE, the Rent Review Commission of the City of Palm Springs, California, renders the following decision:

1. Section 4.04.050(5) of the original Rent Control Ordinance authorized this Commission to increase rents "for a stated period of time, or permanently as appropriate . . ." Effective April, 1990, Section 4.08.070(f)(3) superseded the "old" ordinance. Until amended in July, 1991, this section authorized this Commission to grant a hardship rent increase "for a stated period of time or permanently."

2. In addition, Section 4.08.070(f)(3) authorized a variety of forms of rent "adjustment," including such other form as the Commission "shall find most appropriate." Accordingly, this Commission had (and has) express authority to structure the form of, and limit the duration of, a hardship rent increase as we "shall find most appropriate."

3. This Commission also expressly retained jurisdiction or authority with respect to El Dorado I in Paragraph 1 (at page 8) of the Amended and Restated Findings and Decision ordered by the Superior Court and affirmed on appeal. The increase ordered by the Superior Court would only continue in effect "until further order of the Commission." The Commission's continuing authority or jurisdiction with respect to El Dorado I is, thereby, fully authorized by the Writ of Mandate.

4. Additionally, this Commission's authority to consider an adjustment to the duration of any hardship rent increase ordered in El Dorado I is also found in Section 4.08.070(f)(2) which authorizes the Commission to hear

tenant petitions to review the proposed conduct of a landlord for conformity with the Rent Control Ordinance. Residents' Petition herein ostensibly maintains that Landlord's attempt to enforce a *permanent* $179.46 rent increase is in violation of the ordinance in that it is premised upon debt service expense which is no longer allowed under the Rent Control ordinance and case law interpreting the same.

5. The Appellate Court's language, incident to its decision in *El Dorado Palm Springs Ltd. v. Rent Review Commission* (1991) 230 Cal.App.3d 335, and quoted herein, was *added* to its final opinion in apparent response to issues raised by counsel for Residents and this Commission, and was proffered by that Court as guidance to this Commission. The Appellate Court's ruling, on its face, precludes Landlord from continuing to treat purchase money debt service as an allowable expense as of the date of its refinancing in march, 1989.

6. This Commission's Amended and Restated Findings and Decisions in El Dorado I authorized a prospective hardship rent increase granted in response to a demonstrated hardship for year of application 1986. According to the "plain language" of the opinion of the Court of Appeal, Landlord is entitled to a hardship rent increase to compensate it for losses commencing January, 1986, through the date of its refinancing in March, 1989 — or for a period of three (3) years and three (3) months, which includes years 1986, 1987, 1988 and part of 1989.

7. By virtue of the Writ of Mandate, from and after March 1, 1990, and for three (3) years and three (3) months thereafter, Landlord is authorized to collect an additional $179.46 per unit (less any portion thereof [*e.g.*$65.17] already paid) from Residents.

8. As of June 1, 1993, the hardship rent increase awarded by this Commission and ordered by the Court shall

cease and desist. From and after that date, Landlord shall not collect an additional $179.46 per unit. Absent a subsequent petition for a hardship rent increase, rents chargeable to Residents in the Park shall be those rents permissible in the base year adjusted forward for allowable annual increases pursuant to Section 4.08.040.8

9. The Commission is aware that Residents' petition includes a request for a refund of sums paid pursuant to El Dorado I (i.e. $65.17) after the date of Landlord's refinancing in March, 1989. The request, however, is inconsistent with this Commission's ruling in El Dorado I and the court's award pursuant to mandate proceedings thereafter. As reflected above, pursuant to El Dorado I Landlord was awarded a prospective rent increase for a hardship demonstrated in year of application 1986. As reflected herein, the event permitting this Commission to limit the duration of the El Dorado I hardship increase is Landlord's March, 1989, refinancing. As such, the $179.46 increase pursuant to court order should continue for a period of three (3) years and three (3) months to include 1986, the year of application of El Dorado I, and those years intervening up to and including March, 1989. Again, because payments pursuant to El Dorado I did not commence in full until March of 1990, Landlord will not be fully compensated for El Dorado I until June, 1993. Thus, the Residents' request for a refund is denied.

10. Moreover, this Commission has the express and inherent authority or jurisdiction, pursuant to Section 4.08.070(f), to apportion or "spread" the lump-sum payments presently demanded by Landlord over a sufficient period of time in order to mitigate any potential financial hardship inflicted thereby.

11. While not expressly requested by Residents in their Petition, this commission is mindful of the substantial rent payments being requested by Landlord. Accordingly, this Commission will accord Residents, at their option, a right

either to pay the "retroactive" lump-sum payments ordered by the Superior Court according to the payment schedule requested by Landlord or, in the alternative, to make 36 monthly payments of $70.07, which includes interest at the rate of 10% per annum, pursuant to code of Civil Procedure §§ 685.010 *et seq.*

12. Given the uncertainty engendered by the various demands for payment made upon Residents and the pendency of these proceedings, the Commission understands many if not all Residents have yet to tender any October payment to Landlord for those sums authorized by the Superior Court's Writ of Mandate. Therefore, the commission authorizes Residents, at their option, to make their October payment of $114.29 and their lump-sum payment of $70.07 (for those Residents choosing to spread this payment over time, as authorized herein) on or before November 29, 1991.

13. The Commission retains continuing jurisdiction over these proceedings, findings and decision so as to enable it to take such further action as may be necessary to carry out its findings, decision and the intent of the current Rent Control Ordinance.

14. Pursuant to Code of Civil Procedure § 1094.6(f), notice is hereby given that judicial review of the findings and decision of this Commission must be sought *not later than* 90 calendar days following the date this decision becomes final in accordance with Ordinance No. 1162.

Dated: October 30, 1991

_____

Chairperson of the
Rent Review Commission

Ayes: _____

Noes: _____

Absent: _____

APPENDIX 3

BEST AVAILABLE COPY

APPENDIX 3

I-57251

SUPERIOR COURT
OF THE
STATE OF CALIFORNIA,
COUNTY OF RIVERSIDE

EL DORADO PALM SPRINGS, LTD.

vs.

RENT REVIEW COMMISSION OF PALM SPRINGS

DATE & DEPT.
12-12-91 F

RULING RE MOTION FOR AN ORDER VACATING AND SETTING ASIDE FINDINGS, ETC.

Petitioner's Motion for an order vacating and Setting Aside the October 30, 1991 findings and decisions of the Rent Review Commission is denied.

LEE, Judge
Pruette, Clerk

CLERK'S CERTIFICATE OF MAILING

(Original copy, duly executed, must be attached to original document at time of filing)
(Unsigned copy must accompany document being mailed)

I, ARTHUR SIMS, Clerk, Superior Court of California, for the County of Riverside, do hereby certify that I am not a party to the within action or proceeding; that on the 12th day of December, 1991, I served a copy of the paper to which this certificate is attached, to wit:

RULING RE MOTION FOR AN ORDER VACATING AND SETTING ASIDE FINDINGS, ETC.

accompanied by an unsigned copy of this certificate, by depositing said copy enclosed in a sealed envelope with postage thereon fully prepaid, in the United States post office mail box at the City of Indio, California, addressed as follows:

CHARLES A. PRAWDZIK, ESQ.
75-780 Temple Lane
Palm Desert, CA 92260

JONATHAN J. PANZER, ESQ.
SHAPIRO, POSELL & CLOSE
2029 Century Part East,
Suite 2600
Los Angeles, CA 90067

Dated: 12-12-91

Clerk-Superior Court

By _____, Deputy
J. Pruette

CLERK'S CERTIFICATE OF MAILING

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APPENDIX 4

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APPENDIX 4

INDIO-66104

SUPERIOR COURT
OF THE
STATE OF CALIFORNIA,
COUNTY OF RIVERSIDE

EL DORADO PALM SPRINGS, LTD.
Shapiro, Posell & Close

vs.

RENT REVIEW COMMISSION OF CITY OF PALM SPRINGS
Charles A. Prawdzik
William W. Wynder

DATE & DEPT.
04-20-92 IF

VERIFIED PETITION FOR WRIT OF MANDATE, ETC. — RULING RE PETITION FOR WRIT OF MANDATE AND ADMINISTRATIVE MANDATE (SUBMITTED 3-27-92)

The Court, having considered the submitted matter, rules as follows: Petitioner's request for a Writ of Mandate is DENIED.

RICHARD V. LEE, JUDGE
PRO TEMPORE
D.L. Money, CLERK

APPENDIX 5

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APPENDIX 5

FOURTH APPELLATE DISTRICT,
DIVISION TWO,
NO. E010773/E011072
S039767

IN THE SUPREME COURT
OF THE
STATE OF CALIFORNIA

IN BANK

EL DORADO PALM SPRINGS LTD, ETC.,
Appellant,

v.

RENT REVIEW COMMISSION OF THE
CITY OF PALM SPRINGS,
Respondent.

RESIDENTS OF THE EL DORADO MOBILE HOME PARK,
Real Party In Interest and Companion Case

SUPREME COURT
Filed June 30, 1994
Robert W.
Deputy Clerk

Petitions for review DENIED.

LUCAS
Chief Justice

E010773 & E011072
COURT OF APPEAL
STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO
****REMITTITUR****

EL DORADO PALM SPRINGS. LTD., ETC.,
Plaintiff and Appellant,
v.
RENT REVIEW COMMISSION OF THE CITY OF PALM SPRINGS,
Respondent,
RESIDENTS OF THE EL DORADO MOBILE HOME PARK,
Real Parties in Interest
RESIDENT OF THE EL DORADO MOBILE HOME PARK,
Petitioner and Appellants,
v.
RENT REVIEW COMMISSION OF THE CITY OF PALM SPRINGS,
Respondent,
EL DORADO PALM SPRINGS., LTD., ETC.,
Real Party in Interest and Respondent.

(Super. Ct. No. I 57251) (I66104); County of Riverside; E011103
(Super. Ct. No. I 66097)

I, STEPHEN M. KELLY, Clerk of the Court of Appeal, State of California, Fourth Appellate District, certify the attached is a true and correct copy of the original opinion or decision entered in the above entitled cause on April 1, 1994 and this opinion or decision has now become final.

Each party to bear own costs on appeal.

Witness my hand and seal of the Court this July 8, 1994.

Stephen M. Kelly, Clerk

By: LINDA LEWIS
Deputy Clerk

cc: All parties (Copy of remittitur only, Rule 25(e), California Rules of Court).

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Supreme Court, U.S.
FILED
NOV 10 1994
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No. 94-708

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1994

EL DORADO PALM SPRINGS, LTD.,
a California Limited Partnership,
DBA EL DORADO MOBILEHOME PARK,
Petitioner,

VS.

RENT REVIEW COMMISSION OF THE CITY OF PALM SPRINGS,
Respondent.

RESIDENTS OF EL DORADO MOBILEHOME PARK,
Real Party In Interest-Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION TWO

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No. 94-708

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Real Party In Interest-Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION TWO

I.

INTRODUCTION

The Petitioner, EL DORADO, has failed to adequately show that the California Supreme Court (denying review of the California Court of Appeals, Fourth Appellate District, Division Two)[1] decided an important question of Federal law which has not been, but should be, settled by this Court,

[1]See El Dorado's Petition for Writ of Certiorari, Appendices 1 and 5.

or has decided a Federal question in a way that conflicts with applicable decisions of this Court [*U. S. Supreme Court Rule 10.1(c)*]. Petitioner's principal reliance for a writ to issue is allegedly founded upon the "just compensation" clause of the *Fifth Amendment of the United States Constitution.*

The underlying statute applicable herein is the *Palm Springs Rent Control Ordinance* ("ORDINANCE") an initiative Ordinance originally approved by the voters of the City of Palm Springs in a General Municipal Election held on April 8, 1980. The Ordinance establishes the maximum rents that a mobilehome park owner may charge to the residents of a mobilehome park, utilizing Base Rents established prior to the imposition of the rent controls. Rents are automatically adjusted upwards on an annual basis in proportion to annual increases in the Consumer Price Index (CPI). In addition thereto, Landlords may request "hardship" rent increases whenever the Landlord can show and convince the Rent Review Commission that its Net Operating Income (NOI) is not being maintained on a level proportional to its Base Year's NOI. The NOI is also allowed to increase annually in proportion to the CPI increases. The Rent Control Ordinance, therefore, provides that the Landlord receives a "fair and reasonable" return by allowing rent increases to assure that the NOI is increased annually in proportion to the increase in the CPI.

Petitioner herein, EL DORADO, has benefitted by the application of the annual rental increases attributed to the annual increases in the CPI. It has also benefitted in increasing its NOI by the "hardship" rent increases granted by the COMMISSION and affirmed by the Courts of the State of California. Only after EL DORADO volitionally refinanced its debt structure (increasing such debt from $7,360,000 to $8,600,000) and failed to otherwise comply with the provisions of the Ordinance did EL DORADO cry

foul, and claim that it was deprived of "just compensation." As is described below, the facts in this instance do not support EL DORADO's claim for the issuance of a Writ of Certiorari.

II.

STATEMENT OF FACTS[2]

The following material facts were conveniently omitted from EL DORADO's Petition For Writ of Certiorari, and are stated hereinbelow to clearly show that EL DORADO was not (and is not presently) deprived of earning a "fair and reasonable" return on its investment; therefore, EL DORADO experiences no violation of the *Just Compensation Clause of the Fifth Amendment of the Constitution.* Furthermore, the full facts in this case show that EL DORADO was afforded its full due process rights in all proceedings before the Administrative Agencies ("COMMISSION") , and subsequently, before the Judicial Courts of the State of California.

A. THE LANDLORD'S (EL DORADO) REAL INVESTMENT IN THE SUBJECT PROPERTY.

EL DORADO purchased the mobilehome park ("SUBJECT PROPERTY") on April 1, 1986, for a total purchase price of $7,500,000. EL DORADO's investment consisted of a down payment of $140,000, plus two promissory notes: a purchase money mortgage of $5,400,000 and a secondary mortgage loan from the seller in the amount of $1,960,000. EL DORADO's investment was less than two percent (2%) of the purchase price — 98% was financed by way of the two

---

[2]This "RESIDENTS' " Opposition Brief continues to identify the parties to this action as "EL DORADO," "COMMISSION," and "RESIDENTS" as more fully identified in the Petition for Writ of Certiorari (Article IV.A., pg. 3 of Petition).

purchase money mortgages.[3] The Landlord's (EL DORADO) *real investment* in the mobilehome park was a mere *$140,000.*

B. EL DORADO'S REQUESTS FOR "HARDSHIP" RENT INCREASE

On the very same day that EL DORADO closed escrow in purchasing the park, EL DORADO filed its request with the COMMISSION to increase rents in the approximate amount of *$180.00* per lot, per month in the 377-lot park.[4] EL DORADO believed that it found a "loop-hole" in the local Rent Control Ordinance. Said loop-hole concerned debt-servicing costs — mortgage interest payments considered as a necessary element of operating expenses. For every dollar increase in the debt-servicing costs, there would be a corresponding (proportional) increase in monthly rental fees. Upon recognizing the existence of the debt-service loop-hole provision in its rules and regulations, the COMMISSION immediately repealed said provision in December, 1986. The circulatory effect of such a provision (escalating debt costs) is the antithesis of the underlying provisions of rent control regulation.

Upon pursuing its "hardship" rent increase petition before the COMMISSION, the Trial Court, and the Court of Appeals of the State of California, EL DORADO was successful in obtaining the full amount of its "hardship" rent increase request.[5] The California Court of Appeals acknowl-

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[3]The financial data related to the purchase of the park was supplied by EL DORADO, and is supported by public recording records and is, therefore, uncontrovertible.

[4]An increase of rental income in the amount of $814,320.00 annually, a rental increase of over 70%.

[5]*El Dorado Palm Springs, Ltd. v. Rent Review Comm.* (1991) 230 Cal. App. 3d. 335, rev. denied, 1991 Cal. LEXIS 4091.

edged that EL DORADO had a *"vested right"* to include its debt service costs as an operating expense (when calculating its Net Operating Income — "NOI") because its existing purchase money financing was incurred *prior to* the repeal of the debt-service provisions (Rules & Regulations). However, the Court of Appeal also ruled that the former debt-servicing provision *would not apply* to any subsequent financing that occurred after the repeal of said provisions.

EL DORADO thus benefits from the consequences of the "loop-hole" provision in the Rules & Regulations of the COMMISSION (as such rules existed on April 1, 1986), and receives the benefits of the approximately $180.00 per month, per lot (377 lots) rental increase. As a net effect of such rental increase (while the original financing was in place) , EL DORADO enjoyed a Net Operating Income of approximately *$670,000* (after payment of all operating expenses, real property taxes, and debt-service costs of approximately $573,000). Considering EL DORADO's investment in this project ($140,000), the Net Operating Income (NOI) represented a return of over *470%* on its investment.

EL DORADO did *not* seek appeal of the above-referenced Court of Appeals decision.[6]

C. EL DORADO'S SUBSEQUENT REFINANCING OF ITS DEBT-MORTGAGES

In March, 1989, EL DORADO performed a 100% refinancing of its then existing mortgage-debt. It replaced its then existing debt (approximately $7,360,000) with a new promissory note in the amount of $8,600,000. Firstly, EL DORADO did not disclose to this honorable Court what it

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[6]id.

did with the excess cash resulting from the refinancing.[7] Secondly, EL DORADO gives *short shrift* to the specific ruling of the Court of Appeals of the State of California (see EL DORADO's Pet. for Writ, pg. 8, 2nd para.) on the subject regarding the refinancing act. When EL DORADO performed a 100% total refinancing of its existing debt structure, it vitiated all prior rights which were exclusively dependent upon the provisions which were repealed three (3) years earlier (December, 1986). EL DORADO appeared to believe, and relied upon such belief, that it could perpetually refinance its debt, and continue to extract rent increases from its tenants, without the debt ever being fully paid off.

D. EL DORADO'S ALLEGED OPERATING LOSSES ARE NOT IMMEDIATELY ATTRIBUTABLE TO THE DIRECT OPERATING EXPENSES OF THE PROPERTY.

EL DORADO's operating expenses subsequent to the refinancing of its debt structure (March, 1989) included the following expenses:[8]

	1989	1990	1991
Legal Expenses[9]	$261,483	$280,623	$260,923
Interest[10]	885,317	916,447	975,517
Depreciation[11]	348,511	344,778	323,945

---

[7]EL DORADO apparently diverted the $1 million plus resulting from the refinancing to other purposes.

[8]As reported by EL DORADO in its tax returns, voluntarily submitted.

[9]Legal expenses in 1986 were $26,262, as reported by EL DORADO.

[10]Interest expenses consist primarily of mortgage debt servicing.

[11]Depreciation allocations resulting primarily from purchase costs, plus capital improvements.

EL DORADO laments that it has incurred substantial cash flow operating losses since purchasing the park in 1986. As is readily discernable from the above, EL DORADO, at its own initiative and volition, has increased its legal expenses by approximately *$240,000/year* (NOT for direct operating costs, but for legal pursuit of unconscionable rent increases). Likewise, as a direct consequence of its increased refinancing, it has incurred proportionally larger interest expenses. Its mortgage debt was increased by approximately 17% ($7.36 million to $8.6 million) resulting in an unusual and *unnecessary* increase in interest expense in the amount of approximately $150,000. Legal expenses and interest expenses alone account for approximately *$400,000/year* of unusual and unnecessary cash flow drain. EL DORADO has not suffered operating losses as a consequence of being deprived of its constitutional rights, but rather as a consequence of its own wrongful actions.

III.

FIFTH AMENDMENT — THE JUST COMPENSATION CLAUSE — A FAIR AND REASONABLE RETURN ON INVESTMENT STANDARD

The *Palm Springs Rent Control Ordinance* assures the Landlord a "fair and reasonable" return on its investment by employing the Maintenance of Net Operating Income ("MNOI") approach.[12] Utilizing this approach, and considering the uncontroverted financial data presented by EL DORADO, EL DORADO is assured that in 1994, operating under the Rent Control Ordinance, and its present regulations, it is entitled to earn a Net Operating Income of

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[12]*Baar, Guidelines For Drafting Rent Control Laws: Lessons of a Decade, 35 Rutg. L. Rev. 721* (1983).

$776,582[13] after *all* operating expenses (but not including debt service costs) are considered. This represents a "*fair and reasonable*" return when the full purchase price of the park is considered along with the Landlord's out-of-pocket investment. On the other hand, EL DORADO is contending that it is entitled to an additional rental increase which would allow it to "pass-through" its debt servicing cost as an additional expense. This is nonsense, and leads to the conclusion that EL DORADO seeks an unconscionable profit of $776,582 *AFTER* all expenses, including its debt service. Such a conclusion results in a return on investment of *555%*.[14] The *United States Constitution — Just Compensation Clause* — does NOT grant such a right to the Petitioner, EL DORADO.

IV.

DUE PROCESS RIGHTS — REGULATORY TAKING — JURISDICTION OF COMMISSION — RE: NON-DEBT SERVICE EXPENSES

EL DORADO's apparent attack on the COMMISSION's Ruling of October 30, 1991 (reaffirmed by the Trial Court and the Court of Appeals of the State of California)[15] completely ignores the uncontroverted fact that the COMMISSION has had *NO* subject matter jurisdiction to grant rent increases of "*indefinite*" *duration*. The COMMISSION's original ruling attempted to do this (indefinite duration — see EL DORADO's Petition, pg. 14 of App. 1) and, therefore, was void as to this subject matter (duration

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[13]EL DORADO's Base Year's (1982) NOI was established at $512,460. The current year's NOI is established by adjusting for CPI increases.

[14]EL DORADO's original investment was $140,000.

[15]See Appendix 1, from EL DORADO's Petition For Writ of Certiorari.

of increase). EL DORADO contended that the subject rent increase was a "*permanent*" increase, despite the fact that the COMMISSION's original ruling stated: "Said rent increase shall be effective September 1, 1988, and *continue until further order of this Commission.*" The ruling itself was totally void of any reference to "permanency." Accordingly, COMMISSION reassumed jurisdiction over the subject matter regarding the duration of any rent increase and rendered such decision on October 8, 1991.

The subject matter of "duration" concerned the entire rental increase not just that portion related to debt service expenses. The *entire* rental increase was of an *indefinite* duration. As such, the entire rental increase was subject to renewed jurisdiction by the COMMISSION to determine a proper duration (pursuant to its Rules/Regulations). The COMMISSION did assume subject matter jurisdiction regarding duration, and determined that the hardship rent increases (including non-debt service related increases) would expire on *June 1, 1993.*[16]

EL DORADO received the approximately $180.00 per month, per lot, rental increase for a period of 39 months — for the full duration of time in which the original promissory notes were in effect. Although such a rental increase was the result of an unconscionable loop-hole in the Ordinance, it was allowed to exist because EL DORADO acquired a vested right in acting *before* the Ordinance was amended. EL DORADO could have continued to receive the rental increase as long as it did not disturb the original financing. EL DORADO acted otherwise; its own conduct (100% refinancing) vitiated its right to continue to receive the rental increase. EL DORADO, therefore, has no claim against the COMMISSION for violating its alleged Consti-

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[16]Decision #8, pg. 8, COMMISSION's Findings & Decision of October 30, 1991.

tutional Rights. EL DORADO actually surrendered its rights by its own deliberate acts.

It is further interesting to note that since the date of the refinancing (March, 1989), to the present date, EL DORADO has filed *NO* "Hardship" rent increase request with the COMMISSION asserting that EL DORADO is not able to maintain its net operating income (NOI) along the guidelines of the *Ordinance*. EL DORADO's failure to seek administrative relief pursuant to the provisions of the *Ordinance* belies its claim that it is denied due process under the *Fifth and Fourteenth Amendments of the Constitution*. EL DORADO asserts a very weak argument, or excuse, that it has not done so (Hardship Application) because it takes too long and is costly, and that the possible benefit to be gained is far outweighed by such time and expense. How can EL DORADO claim a deprivation of due process when it itself waives its right to seek a remedy?

V.

CONCLUSION

The basic issue in this instance is not whether the *Ordinance* on-its-face, or as "applied," constitutes a regulatory taking of EL DORADO's property. As long as EL DORADO complied with the provisions and guidelines of the Ordinance, the facts in this instance clearly show that EL DORADO received "just compensation" — in the form of a "fair and reasonable" return on its investment. For a brief period of time (39 months), EL DORADO received an unconscionable return on its investment through the manipulation of a loop-hole in the provisions of the *Ordinance*. Upon the repeal of the loop-hole provisions (1986) and EL DORADO's subsequent acts for refinancing (1989), EL DORADO thus vitiated certain prior acquired rent increases. Nevertheless, subsequent to the date of refinancing, EL DORADO is still entitled to receive a "fair and reasona-

ble" return on its investment simply by seeking a hardship rent increase (from COMMISSION) to insure that it is able to maintain its net operating income. EL DORADO, by its own conduct and volition, has decided not to seek such a remedy. This Court should not assist the Petitioner in its own stubborn conduct; it already has a remedy available to it through an administrative process, a rent control "hardship" rent increase application. For the reasons stated hereinabove, the pending Petition For Writ of Certiorari should be denied.

Dated: November 10, 1994

Respectfully Submitted,

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Attorneys of Record For Real Party In Interest — Residents of El Dorado Mobilehome Park

Supreme Court, U.S.
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No. 94-708

In The

Supreme Court of the United States

October Term, 1994

EL DORADO PALM SPRINGS, LTD.,
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RENT REVIEW COMMISSION OF THE
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Respondent,

RESIDENTS OF EL DORADO MOBILEHOME PARK,

Real Party in Interest-Respondent.

Petition For Writ Of Certiorari
To The California Court Of Appeal
Fourth Appellate District, Division Two

BRIEF OF RESPONDENT, RENT REVIEW COMMISSION OF THE CITY OF PALM SPRINGS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the October 30, 1991 rulings of the Rent Review Commission of the City of Palm Springs correcting its prior administrative rulings of October 17, 1988 to be consistent with the California "vested rights" doctrine, as announced in the decisions of the California Court of Appeal, Fourth Appellate District, Division Two, in *Palacio de Anza v. Palm Springs Rent Review Commission*, 209 Cal.App.3d 116, 257 Cal.Rptr. 121 (1989), and *El Dorado Palm Springs Limited v. Rent Review Commission*, 230 Cal.App.3d 335, 281 Cal.Rptr. 327, *review denied*, 91 Cal. LEXIS 4092 (1991), present any important question of federal law which has not been, but should be, settled by the United States Supreme Court?

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No. 94-708

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BRIEF OF RESPONDENT, RENT REVIEW COMMISSION OF THE CITY OF PALM SPRINGS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I.

ADDITIONS TO OPINIONS BELOW

In addition to the opinions included in the Appendix filed by Petitioner, included with this brief is the *full* opinion of the Court of Appeal, Fourth Appellate District,

Division Two, in the case of *El Dorado Palm Springs Limited v. Rent Review Commission*, 230 Cal.App.3d 335 (May 20, 1991), *review denied*, 1991 Cal. LEXIS 4092 (June 30, 1991) (and commonly referred to as "*El Dorado I*"), particularly those portions of that opinion that are binding on the parties herein but were not designated for publication pursuant to the applicable California Rules of Court. This document is included as Respondent's Appendix No. 1.

II.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

For the uninitiated, there is a lengthy and somewhat complicated history leading to the petition before this Honorable Court. Essential to an understanding of the actions of the Rent Review Commission of the City of Palm Springs (simply the "Commission"), as well as the *rulings* of the appellate court below, much of this procedural and factual history needs to be reviewed.[1]

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[1] The Commission concurs in that portion of the Petition for Writ of Certiorari (at p. 3) which identifies the parties herein. For ease of reference, the landlord will be referred to throughout as the "Petitioner" and the Real Party in Interest will be referred to as the "Residents." However, there is no evidence in the record below to support the characterization of the mobilehome park in question as an "upscale resort," nor the implication flowing therefrom that the Residents are all affluent senior citizens.

A. Petitioner Purchases the Park.

In April, 1986, Petitioner purchased EL DORADO MOBILEHOME PARK (the "Park"). Petitioner acquired the Park for $7,360,000. This purchase was financed principally by two promissory notes: (1) a note for $5,400,000 payable to California Federal Savings, secured by a first priority deed of trust, and (2) a note for $1,960,000 payable to Century Properties Fund 7-13, secured by a second priority deed of trust.

B. Petitioner Institutes *El Dorado I*.

Concurrently with his purchase of the Park, Petitioner instituted proceedings before the Commission seeking a "hardship rent increase" based upon a 1986 year of application (this hardship rent increase petition, the first mandate proceeding which followed in the Superior Court, and the California Court of Appeal, Fourth Appellate District, Division Two's resolution of the appeal are commonly and collectively referred to as "*El Dorado I*").

At that time, the Palm Springs rent control guidelines permitted the inclusion of purchase money interest expenses in calculating hardship rent increases (Guideline § 101(c)(1)(xii) is commonly referred to as the "debt service cost pass-through guideline"). Subsequent to commencement of *El Dorado I* and on December 15, 1986, the City Council repealed the debt service cost pass-through guideline, thereby eliminating debt service

expense as an allowable expense under the City's Rent Control Ordinance.[2]

On July 18, 1988, the hardship rent increase administrative hearings in *El Dorado I* concluded, and on October 17, 1988, the Commission issued its original findings and decision. Pursuant to that decision, Petitioner was authorized a monthly per space hardship rent increase of $65.17 "until further order of [the] Commission."[3] In doing so, however, the Commission disallowed substantially all of the debt service expenses claimed by Petitioner based upon the prior repeal of the debt service cost pass-through guideline.

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[2] In doing so, the City brought its rent control ordinance in line with those of other California municipalities, almost all of which limit the ability of landlords to pass-through debt service expenses to tenants in hardship rent increase proceedings. There is not a shred of evidence in the record below to support the argument advanced by Petitioner that the City Council repealed the guidelines in response to "political pressure" from the Residents.

[3] While the court below ultimately concluded that the Commission was obligated to fix the duration of this hardship rent increase for either a "stated period of time" or "permanently," the court below expressly rejected, on adequate and independent state or municipal law grounds, the argument *again* advanced by Petitioner that inclusion of the phrase "until further order of [the] Commission" meant the hardship rent increase was permanent. (*See* Appendix No. 1, Slip Op. at 14 ["It does not follow, as (Petitioner) urges, that the hardship rent increase was necessarily permanent . . . and the Commission had jurisdiction to later enter an order granting a hardship rent increase which conformed to one of the two available options within the Commission's powers."].)

C. *Palacio* is Decided.

On March 3, 1989, the California Court of Appeal, Fourth Appellate District, Division Two, issued its opinion in *Palacio de Anza v. Palm Springs Rent Review Commission*, 209 Cal.App.3d 116, 257 Cal.Rptr. 121 (1989), holding that a Palm Springs landlord, who purchased rental property in reliance upon the debt service cost pass-through guideline, had a "vested property right" to continue to include debt service expense (notwithstanding the repeal of the debt service cost pass-through guideline) in proceedings before the Commission for a hardship rent increase. The precise holding of the *Palacio* court was as follows:

> The Guidelines and rent control ordinances did not create a statutory "right of action" in Palacio. *Rather, those enactments created land-use property rights which became vested in Palacio when the financing of the apartment purchase was undertaken in reliance on the existing rent-control laws.* In this sense, Palacio enjoys a situation or status analogous to that of one who has established the right to pursue a nonconforming use on land following a zoning change. (*City of Santa Barbara v. Modern Neon Sign Co.* (1961) 189 Cal.App.2d 188 [11 Cal.Rptr. 57].) *Any attempt to retroactively apply the repeal of the Guidelines' debt financing cost allowance to Palacio's vested rights would constitute an invalid impairment of an established economic/property interest without due process of law.*

209 Cal.App.3d at 120 (emphasis added).

D. The Park is Refinanced.

On March 22, 1989 (indisputably after the repeal of the debt service cost pass-through guideline), Petitioner refinanced his entire purchase money mortgage debt by executing a new note for some $8,650,000 secured by a first priority deed of trust on the Park. The amount financed was in *excess* of the actual purchase price for the Park.

E. The First Superior Court Writ Proceeding.

On May 22, 1989, Petitioner instituted proceedings before the California Superior Court seeking a writ of administrative mandate. Specifically, Petitioner argued that, like the landlord in *Palacio*, he too had a "vested right" to continue to treat purchase money debt service as an allowable expense incident to a petition for a hardship rent increase notwithstanding the repeal of the debt service cost pass-through guideline.

On December 8, 1989, the trial court issued a Peremptory Writ of Mandate directing the Commission to modify its original findings and decision to include debt service expenses previously disallowed in calculating the sought-for hardship rent increase. The trial court further ordered the Commission to award Petitioner an additional monthly hardship rent increase of $114.29 per space for a total authorized hardship rent increase of $179.46 per space per month. The writ of mandate further authorized collection of this additional hardship rent increase commencing from and after March 1, 1990.

F. The Opinion of the Court of Appeal in *El Dorado I*.

On December 11, 1989, the Residents (with amicus support from the City of Palm Springs) appealed the writ of mandate to the California Court of Appeal, Fourth Appellate District, Division Two. Consequently, collection of that additional per space monthly hardship rent of $114.29 was automatically stayed pending appeal. Cal. Civ. Proc. Code §§ 916 & 1110b (no order lifting the automatic stay was issued). During the pendency of the appeal, therefore, no payments (beyond the $65.17 originally ordered by the Commission) were made by the Residents pursuant to the writ of mandate.

The judgement issuing the writ of mandate was affirmed in *El Dorado Palm Springs, Ltd., supra,* 230 Cal.App.3d at 335. More importantly, for purposes of the present Petition, the Court of Appeal, in "Section IV" of its *El Dorado I* opinion, explained and then narrowed the scope of the vested rights doctrine it had previously announced in *Palacio* as follows:

> (1) *Palacio* does *not* stand for the proposition that any landlord holding rental properties within the city which were purchased with a loan predating the repeal of section 101(c)(1)(xii) [the debt service cost pass-through guideline] is entitled to apply for a debt service cost "pass through" rent increase. *Palacio applies only to debt service costs incidental to rental property purchase loans which were initially "assumed" or "undertaken" during that relatively short period of time while section 101(c)(1)(xii) was in effect.* (*Palacio, supra,* 209 Cal.App.3d at p. 120.)

> (2) Consistent with the immediately preceding comment, *Palacio does not apply to any "refinancing" which is carried out following the repeal date of section 101(c)(1)(xii).* Any such refinanced debt burden would have been "assumed" *after* section 101(c)(1)(xii) ceased to be effective.

(*See* Respondent's Appendix No. 1, at App. 26; emphasis added and in original.)

The California Supreme Court subsequently declined to review the decision of the California Court of Appeal, Fourth Appellate District, Division Two. Indeed, Petitioner filed a brief in opposition to the petitions of the Commission and the Residents seeking review before the California Supreme Court. Most importantly, Petitioner *did not seek review* of Section IV (or any other portion for that matter) of the opinion in *El Dorado I.*

On September 5, 1991, the Court of Appeal issued its remittitur, and the California Superior Court reacquired jurisdiction. Hence, the writ of mandate became *final* and enforceable. No petition for discretionary review of *El Dorado I* was ever presented to this Court.[4]

G. Actions of the Commission Following Remand.

On October 8, 1991, the Commission entered amended findings, thereby implementing the mandatory requirements of the writ of mandate. On October 10,

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[4] Under California law, upon issuance of the remittitur, the judgment and opinion in *El Dorado I* became final for all purposes. *Hampton v. Superior Court*, 38 Cal.2d 652, 654, 242 P.2d 1 (1952); Cal. Civ. Proc. Code §§ 43 and 912.

1991, the Commission made its return on the writ of mandate to the trial court.

H. Petitioner Demands 300% Rent Increase.

Significantly, in July, 1991, in apparent anticipation of the writ being affirmed on appeal, Petitioner notified his Residents that, commencing on October 1, 1991, he would begin collection of $2,352.47 per space, representing accrued rents of $2,171.51 authorized by the writ (at $114.29 per month from and after March 1, 1990, through September 30, 1991) inclusive of interest at 10% per annum. Petitioner indicated his willingness to spread these lump sum accrued rents over three months at $797.26 per month.

In addition, Petitioner demanded that payment of the non-accrued monthly hardship rent increase of $114.29 per month also commence on October 1, 1991. Petitioner maintained the court-ordered payment of $114.29, together with the Commission-authorized $65.17 payment, represented a *permanent* (that is, without limitation as to duration) hardship rent increase of $179.46 pursuant to its original petition for a hardship rent increase.

The Residents of the Park are largely elderly retirees living on fixed incomes. As of October, 1991, the average per-space rent ranged from approximately $300 to $400. As of October 1, 1991, Petitioner sought to increase those rents to approximately $1,200 to $1,300 – an increase of roughly 300%! The proposed increase, therefore, posed a substantial economic hardship to these Residents.

I. The Residents Petition The Commission for Relief From This Rent Increase (Commission Case No. 91-10-30-F & D-03).

On September 5, 1991, the Residents initiated a petition with the Rent Review Commission, pursuant to Section 4.08.070(f)(2) of the Palm Springs Municipal Code. Specifically, they sought a ruling of the Commission limiting, based on the holding of the court in *El Dorado I*, the duration of the $179.46 per space monthly hardship rent increase authorized by the writ of mandate.

It was undisputed Petitioner refinanced its *entire* purchase money debt (and more) in March, 1989.[5] It was also undisputed that the debt service cost pass-through guideline at issue was repealed in December, 1986 (over two years *prior* to Petitioner's refinancing). Accordingly, the Residents argued the directive of the *El Dorado I* court compelled the conclusion that Petitioner lost his vested right to a continual debt service cost pass-through as of the date of his refinancing.

The Residents additionally sought a refund of all payments sought or received by Petitioner pursuant to its

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[5] Indeed, Petitioner alleges the *El Dorado I* court was *aware* of this refinancing when it added Section IV to its opinion (Section IV was not in the tentative opinion issued prior to oral argument but was added to the final text when the opinion was formally issued) which limited the duration of the pass-through of debt service expense. Accordingly, Petitioner can hardly argue (as he did before the *El Dorado II* court) that Section IV of the *El Dorado I* opinion was "dicta."

hardship petition subsequent to the date of its refinancing, *i.e.*, March, 1989. They further sought an order relieving them of any obligation to pay the court-ordered $114.29 hardship rent increase (including the sum of $2,171.51 that had accrued since March, 1990).

J. Rulings of the Commission of October 30, 1991.

On October 30, 1991, the Commission issued its findings and decision on the administrative petition of the Residents as follows:

1. Request for Refund & Relief From Accrued Rent Denied.

The Commission denied the request for a refund of any rents paid incident to the original hardship petition. It similarly denied the request to be relieved of any obligation to pay accrued rents covering the period March, 1990, to September, 1991 (these rents had accrued by order of the trial court but had not been paid because of the automatic stay of that order during the pendency of the first appeal).

2. Request for Order Limiting Duration of Hardship Rent Increase Granted.

However, applying the directive of the *El Dorado I* opinion, the Commission concluded Petitioner's refinancing in March, 1989, vitiated his state-law "vested right" to continue to treat purchase money debt service costs as an

expense justifying a hardship rent increase. (*See* Appendix No. 2, Slip Op. at 7, ¶ 5.) Noting that its original and amended findings authorized a prospective hardship rent increase in response to a demonstrated hardship for year of application 1986, the Commission determined Petitioner was entitled to a hardship rent increase for the period commencing in January, 1986, through the date of its refinancing in March, 1989 – or for a period of three (3) years and three (3) months.

3. The Commission Fixes Duration of the Hardship Rent Increase.

The trial court's writ of mandate did not authorize collection of the full amount of the hardship rent increase attributable to debt service cost pass-through until March 1, 1990. Therefore, the Commission concluded that, for a period of three (3) years and three (3) months thereafter, or until June 1, 1993, Petitioner was authorized to collect $179.46 per space per month (less any portion thereof, *e.g.*, $65.17 already paid) from his Residents. (*See* Appendix No. 2, Slip Op. at 7-8, ¶¶ 6-8.)

Thereafter, the Commission ordered Petitioner to "roll back" rents to amounts that comport with the City's Rent Control Ordinance (absent the hardship rent component). The Commission noted Petitioner was (and is) free to bring another hardship petition should its operating expenses (other than debt service) justify a continuing hardship rent increase under the City's ordinance. (*See* Appendix No. 2, Slip Op. at 7-8, ¶ 8.) Thus, in a manner consistent with the trial court's writ of mandate, the

Commission issued a "further order" *prospectively* limiting (consistent with the opinions in *Palacio* and *El Dorado I*) the duration of the hardship rent increase awarded (or ordered) pursuant to Petitioner's original hardship rent increase petition for year of application 1986.[6]

K. Petitioner's Contempt Motion.

Decidedly unhappy with the rulings of the Commission, Petitioner instituted contempt proceedings, pursuant to California Code of Civil Procedure § 1097, seeking to set aside the actions of the Commission pursuant to the contempt powers vested in the trial court to enforce its prior writ of mandate.[7] The trial court, on December 12, 1991, correctly denied the requested contempt citation.

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[6] In addition, the Commission found that payment of the lump-sum accrued rents of $2,171.51 ($179.46 - 65.17 x 19 months [covering the period March 1, 1990 to October 1, 1991 while the automatic stay was in effect]), even if spread over three months, represented a substantial economic *hardship* for the Residents. The Commission thus gave the Real Parties in Interest the *option* to satisfy this lump-sum rent obligation *either* according to the payment plan demanded by Landlord *or* over three years provided the Real Parties in Interest paid 10% interest per annum ($2,171.51 X 10% spread over 36 months = 70.07 per month).

[7] About the only thing the Landlord did not seek in its contempt proceeding was to throw individual Commission members in jail (although it clearly hinted at such during proceedings before the Commission prior to October 30, 1991).

L. The Second Superior Court Writ Proceeding.

Petitioner then proceeded to file *another* mandate proceeding challenging the rulings of the Commission on both jurisdictional and substantive grounds. Concurrently therewith, the Residents filed their own mandate proceeding challenging only limited substantive portions of the Commission's rulings.

By stipulation of the parties, both of these writ proceedings were consolidated for purposes of briefing and hearing. Following a lengthy hearing, the California Superior Court denied both writs. There followed consolidated appeals to the California Court of Appeal, Fourth Appellate District, Division Two, the court below whose opinion is the subject of the present Petition for Writ of Certiorari. (Again, for ease of reference, the decision of the Court of Appeal below, together with the administrative action of the Commission on October 30, 1991, and the proceedings before the California Superior Court thereafter may be conveniently and collectively referred to as *"El Dorado II."*)

M. The Opinion of the Court of Appeal in *El Dorado II*.

While the second opinion below construes and then articulates the jurisdiction of the Commission under the organic rent control ordinance of the Palm Springs Municipal Code, the "heart" of the lower court's opinion addressed itself to the dispositive issue pending for review – whether the Commission had, in its rulings of October 31, 1991, correctly applied the California "vested

rights" doctrine as articulated in *Palacio* and as subsequently narrowed in *El Dorado I*. The court below answered that question resoundingly in the affirmative.

Addressing itself to this dispositive state-law issue the Court of Appeal below held as follows:

> El Dorado next contends that in its October 30, 1991 rulings and decision, the Commission misconstrued this court's opinion in *El Dorado I* affirming the writ of mandate. Specifically, El Dorado argues that the language in this court's earlier opinion concerning the effect of *Palacio* (see *ante* at p. 8) was merely dicta, and that this court did not intend such language to apply to El Dorado's March 1989 refinancing. *El Dorado is mistaken; the Commission's October 30, 1991, rulings and decision are fully consistent with the language and intent of this court's decision, in El Dorado I.*

(*See* Appendix No. 1, Slip Op. at 16; emphasis added and in original.)

Having concluded the Commission had correctly applied the "vested rights" doctrine (as articulated in two decisions of the California Court of Appeal, Fourth Appellate District, Division Two), it followed as simple logic the court below would affirm the decision of the Commission in all respects.

III.

SUMMARY OF THE ARGUMENT

When seen for what it really is, the present Petition for Writ of Certiorari is nothing more than an untimely *post-hoc* challenge to a line of cases articulating, and then limiting the application of, a state-law doctrine on "vested rights" in the context of one city's rent control

ordinance. It is curious that Petitioner once defended before the California Supreme Court *the very doctrine* (indeed the very *opinion*) that now results in his claim of deprivation of his federal constitutional rights.[8]

Had such a deprivation occurred in fact, this Petitioner should have long-ago raised the constitutional claims he attempts to construct in this Petition. In reality, however, Petitioner's real dissatisfaction is with the lower court's application of the California "vested rights" doctrine.

Had the court below truly erred in its articulation and application of that doctrine, Petitioner should have been successful in attracting the attention of the California Supreme Court (the body to whom the present Petition should be properly addressed). Because the California Supreme Court concluded that further review

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[8] The *El Dorado II* court specifically *rejected* the arguments advanced by the Commission that the rule of *Palacio* (even as limited in *El Dorado I*) was wrongly decided, should be revisited, and ultimately rejected. Accordingly, the administrative rulings of the Commission which are under attack in this Petition are nothing more than a court-required action to conform its prior administrative ruling to the state-law "vested rights" doctrine articulated in 1989 and later confirmed and limited in 1991. The Commission has taken no independent action beyond that *compelled* by the opinion of the *El Dorado I* court. Had the Commission not issued its October 31, 1991 rulings, it certainly would have been charged with disobeying the directives of the Court of Appeal by the Residents. Accordingly, if there has been any "taking" of Petitioner's property (which there has not been), such a "taking" was effectuated by the 1991 opinion in *El Dorado I* which Petitioner *never sought to have reviewed*.

of the "vested rights" doctrine announced in *Palacio* and later limited in *El Dorado I* was not warranted, Petitioner now comes before this Honorable Court seeking to accomplish (in a federal forum) what rightfully belongs in the state courts.

IV.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

It should now be abundantly clear that the present Petition for Writ of Certiorari is nothing more than an effort to litigate, in a federal forum, questions involving purely state-law considerations regarding the scope of, and application of, the California doctrine of "vested rights" as applied by the California Court of Appeal, Fourth Appellate District, Division Two. Notwithstanding Petitioner's attempts to dress his dissatisfaction with this California "vested rights" doctrine in the habiliments of some federal constitutional deprivations, the *El Dorado II* opinion below did nothing more remarkable than confirm for Petitioner and his Residents that the Commission, in its administrative rulings of October 30, 1991, correctly understood and applied the mandates contained in the opinions of *Palacio* as later clarified and narrowed in *El Dorado I*.

A. The Decision of the Court Below Rests Entirely on Adequate and Independent State-Law Grounds; Such Opinion Addressed and Resolved Purely State-Law Issues Regarding the Scope of Petitioner's "Vested Rights."

This Court, long ago, held "[w]here the judgment of a state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction". *Allen v. Argumba*, 198 U.S. 149, 154, 155, 25 S.Ct. 622, 49 L.Ed. 990 (1905). More recently, this Court articulated the rationale for such a rule as being grounded in "[r]espect for the independence of state courts, as well as avoidance of rendering advisory opinions, [which] have been the cornerstone of this Court's refusal to decide cases where there is an adequate and independent state ground." *Michigan v. Long*, 463 U.S. 1032, 1040, 103 S.Ct. 3469, 72 L.Ed.2d 1201 (1983).

Most recently, this Court has held that "[w]hen a state-court decision is clearly based on state law that is both adequate and independent . . . " there will be no basis for further review by the United States Supreme Court. *Illinois v. Rodriguez*, 497 U.S. 177, 182, 110 S.Ct. 2793, 111 L.Ed. 148 (1990). In determining whether a lower state court's opinion rests on state law, this Court undertakes to review the opinion to see if, in the context of the totality of the opinion, it is "plain" that the decision is grounded in the law of that state. *Illinois, supra*, 497 U.S. at 182; *Michigan, supra*, 463 U.S. at 1042.

For example, in *California v. Freeman*, 488 U.S. 1311, 109 S.Ct. 854, 102 L.Ed.2d 957 (1989), Justice O'Connor reviewed an opinion of the California Supreme Court to determine whether, in light of the teachings of *Michigan v. Long, supra*, 463 U.S. at 1041, it appeared "clear from the face of the opinion that its analysis constitutes an adequate and independent state ground of decision." *Freeman, supra*, 488 U.S. at 1313. Justice O'Connor concluded the analysis contained in the opinion turned on an interpretation of a particular provision of the California penal code. Justice O'Connor further concluded that the structure of the various subsections of the opinion dealt with state law issues which were not "interwoven with federal law," and that such discussion of federal law as existed in that opinion was clearly an "alternative holding" to the decision of the California Supreme Court. *Freeman, supra*, 488 U.S. at 1313-14.

In determining whether the *El Dorado II* opinion below rested its decision on state law grounds, this Honorable Court has only to review the text of that opinion to determine that it "plainly" rests entirely on state law within the Fourth Appellate District. A fair-minded reading of that opinion leads inescapably to the conclusion that it "plainly" rests *entirely* on an application of the doctrine of "vested rights" as that doctrine has been articulated and applied in the Fourth Appellate District, Division Two. Not a single federal authority is cited by the lower court.

Apparently cognizant of this jurisdictional bar to further appellate review, Petitioner repeatedly casts his arguments in the form of allegations that the Commission "terminated" his preexisting hardship rent increase. To

the contrary, the Commission did nothing more than to comply with the dictates of California case law articulating and then limiting the application of the "vested rights" doctrine in the context of the Palm Springs rent control laws.

Therefore, it was not the Commission who "terminated" Petitioner's hardship rent increase; rather it was the opinions of the Court of Appeal in *Palacio* and later in *El Dorado I*. The only action taken by the Commission on October 30, 1991 was to read and apply that doctrine as it was commanded by the Court of Appeal to do in 1991. The 1994 *El Dorado II* opinion below does nothing more remarkable than confirm that the Commission correctly read and applied the opinions of *Palacio* and *El Dorado I*.

B. The October 30, 1991 Rulings of the Commission Do Not Deprive Petitioner of "Due Process of Law."

In his Petition before this Honorable Court, Petitioner focuses all his arguments on his claimed "deprivations," while blithely assuming that any such arguable deprivation occurred "without due process." However, to demonstrate a constitutionally cognizable deprivation, Petitioner must establish *both* a deprivation and the lack of "due process." Even if the Commission were to concede (for the sake of argument only) any deprivation has occurred, it cannot be doubted Petitioner has been afforded abundant "due process."

By now it should be crystal clear the administrative rulings of the Commission of October 30, 1991 amount to nothing more than a correction of its prior hardship rent increase rulings to bring such rulings in conformity with

the durational time limits imposed by the opinion of the *El Dorado I* court. Respectfully, the Commission cannot be found to have deprived Petitioner of some constitutionally protected right when the action taken by the Commission is compelled by an opinion of a court of appellate jurisdiction contained in an opinion issued directly to that Commission, which order long-ago became final due to Petitioner's failure to seek review of *any portion* of that opinion. *Cf., Baker v. McCollan*, 443 U.S. 137, 145-46, 99 S.Ct. 2689, 61 L.Ed.2d 433 (1979) (police did not deprive arrestee of due process where arrest was pursuant to valid warrant but identifying the wrong person; *Mitchell v. Aliusi*, 872 F.2d 577, 579 (4th Cir. 1989) (no violation of due process where officer acts in response to command of a facially valid warrant).

Therefore, if there has been any "deprivation," such has been visited upon this Petitioner by the panels of justices who confirmed and limited the application of the vested rights doctrine articulated in *Palacio* and later in *El Dorado I*. Even then, Petitioner is hardly in a position to argue that any "deprivation" he has sustained occurred without "due process."

Petitioner was the plaintiff in the first superior court writ of mandate proceeding that resulted in the opinion in *El Dorado I*. He was the prevailing party in that litigation, and he was awarded a *substantial* additional hardship rent increase. Petitioner was the *responding* party in the subsequent appeal to the Fourth Appellate District, Division Two, which resulted in an opinion confirming the rent increase ordered by the California Superior Court, but which *also* made clear that such rent increase

as had been awarded had a potential durational time limit.

Most importantly, it was Petitioner who *urged* the California Supreme Court *not to accept the petitions of the Commission and the Residents* to review claimed errors in the opinion of *El Dorado I*. What has now become obvious is that Petitioner did not really believe the *El Dorado I* court meant what it said in Section IV of its opinion regarding the potential for a durational limit on the pass-through of debt service expenses. Indeed, Petitioner argued in the proceedings below that Section IV of the lower court's *El Dorado I* opinion was, in reality, "dicta" to the decision and/or that Section IV did not apply to what Petitioner characterized to be his "replacement" financing.

To put it bluntly, Petitioner was simply in error to have ignored Section IV of the *El Dorado I* court's opinion and not to, thereafter, have sought review of that opinion. He now attempts to *blame* the Commission for doing that which it was commanded by the Court of Appeal to do at his behest.

C. The October 30, 1991 Rulings of the Commission Do Not Result in a "Taking" of Petitioner's Property.

Of course, the foregoing analysis assumes (for the sake of argument only) there has been, in part, some form of taking of Petitioner's property by the Commission. Even if this Court were to put aside the indisputable fact that the Commission acted merely to comply with the mandate of the opinions of the lower court in *Palacio* and

El Dorado I, the actions of the Commission in setting a duration on a previously awarded discretionary hardship rent increase does not result in a taking of property under the Fifth Amendment to the United States Constitution.

It is well-settled that regulatory action which results merely in the reduction in value of real property does not affect a "taking." *HFH, Ltd. v. Superior Court*, 15 Cal.3d 508, 518, 125 Cal.Rptr. 365 (1975), *cert. denied*, 425 U.S. 904, 96 S.Ct. 1495 (1976); *William C. Haas & Co., Inc. v. City and County of San Francisco*, 605 F.2d 1117, 1121 (9th Cir. 1979), *cert. denied*, 445 U.S. 928, 100 S.Ct. 1315, 63 L.Ed.2d 761, *reh'g denied*, 464 U.S. 929, 100 S.Ct. 1867, 64 L.Ed.2d 282 (1980). Petitioner's claim is simply that, because the Commission terminated the duration of its previously court-ordered hardship rent increase, notwithstanding that such termination was in compliance with the mandate of the opinion in *El Dorado I*, the Commission has taken his property. Not so. Nothing in the United States Constitution guarantees Petitioner the right to indefinite hardship rents or maximum profits.

As this Court stated in *Andrus v. Allred*, 444 U.S. 51, 65, 100 S.Ct. 318, 62 L.Ed.2d 210 (1979):

> Suffice it to say that government regulations – by definition – involve the adjustment of rights for the public good. Often this adjustment curtails some potential for the use or economic exploitation of private property. To require compensation in all such circumstances would effectively compel a government to regulate by purchase. "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in general law." [Citation omitted.]

> The Takings Clause, therefore, preserves governmental power to regulate, subject only to dictates of "justice and fairness." [Citations omitted.] . . . But the denial of one traditional property right does not always amount to a taking. At least where an owner poses a full "bundle" of property rights, the destruction of one "strand" of the bundle is not a taking, because the aggregate must be viewed in its entirety. . . .
>
> It is, to be sure, undeniable that the regulations here prevent the most profitable use of appellees' property. Again, however, that is not dispositive. When we review regulation, a reduction in the value of property is not necessarily equated with a taking. [Citations omitted.] . . . At any rate, loss of future profits – unaccompanied by any physical property restriction – provides a slender reed upon which to rest a takings claim.

A land use regulation affects a taking " 'only when its effect is to deprive the landowner of substantially all reasonable use of his property.' " *Delucchi v. County of Santa Cruz*, 179 Cal.App.3d 814, 825, 225 Cal.Rptr. 43 (1986); *Griffin Development Co. v. City of Oxnard*, 39 Cal.3d 256, 266, 217 Cal.Rptr. 1 (1985).

Accordingly, not only has Petitioner been afforded all the process he is due (and more), the 1991 administrative rulings of the Commission do not affect a taking of his property in any event.[9]

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[9] In his "takings" argument, Petitioner relies on the now "repudiated model" for takings as articulated by Justice Holmes in *Pennsylvania Coal Company v. Mahone*, 260 U.S. 393, 43 S.Ct.

D. This Petition, and the Purported Constitutional Issues Raised Therein, is Untimely.

Once the actions of the Commission are placed in appropriate context, it becomes immediately clear that this Petition for Writ of Certiorari is nothing more than an untimely challenge to the 1991 opinion of the Court of Appeal, Fourth Appellate District, Division Two, arising out of its decision in *El Dorado I*. Further, pursuant to Rule 13.1 of the Rules of the Supreme Court of the United States, the constitutional issues purportedly raised in the pending Petition are untimely because they should have been raised initially before the California Supreme Court following issuance of the *El Dorado I* decision and, if unsuccessful in that forum, before this Honorable Court *thereafter*.

It is simply too late for Petitioner to suddenly realize the opinion of the *El Dorado I* court would result in some "deprivation" of his claimed constitutional rights but to await the raising of those issues until that same court later confirmed, in its 1994 *El Dorado II* opinion, that it

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158, 67 L.Ed. 322 (1922). Commenting on the history of this Court's takings jurisprudence, Professor Manheim observes "the court has squarely rejected Justice Holmes' model of dividing single parcels into discrete estates, favoring instead Justice Brandeis' approach of looking at a law's impact on overall property value. . . . [¶] Under the modern unitary approach, the net economic impact of the state law, even when combined with local rent control, would be insufficient to cause a regulatory taking." Manheim, *Tenant Eviction Protection and the Takings Clause*, 1989 Wis.L.Rev. 925, 969 & n. 237 (1989).

meant what it said back in 1991. To put it bluntly, this Petition is too little, too late.

V.

CONCLUSION

The Commission finds itself in a "damned if it does, damned if it doesn't" circumstance in the present Petition. Had it failed to issue its administrative rulings of October 31, 1991, setting a durational limit on the previously court-ordered hardship rent, the Commission risked the sanction that would have followed for failing to comply with the dictates of the Court of Appeal in its *El Dorado I* opinion. Having dutifully complied with the dictates of that same court, and having been assured by the *El Dorado II* court that it acted correctly, the Commission now finds itself accused before this Honorable Court of having wrecked constitutional havoc on Petitioner.

Respectfully, the actions of the Commission do not present *any* question of federal law, much less an important one, that has not been, but should be, settled by the United States Supreme Court.

DATE: November 16, 1994

Respectfully submitted,

RUTAN & TUCKER

WILLIAM W. WYNDER
Attorneys for Respondent,
Rent Review Commission of The City Of Palm Springs

RESPONDENT'S APPENDIX NO. 1

APPENDIX I

CERTIFIED FOR PARTIAL PUBLICATION*

COURT OF APPEAL, FOURTH DISTRICT
DIVISION TWO
STATE OF CALIFORNIA

EL DORADO PALM SPRINGS, LTD., etc., Plaintiff and Respondent, v. RENT REVIEW COMMISSION OF THE CITY OF PALM SPRINGS, Defendant.	E007483 (Super. Ct.No. I 57251) OPINION (Filed May 20, 1991)
RESIDENTS OF THE EL DORADO MOBILE HOME PARK, Real Parties in Interest and Appellants.	

APPEAL from an order of the Superior Court of Riverside County granting a petition for a writ of mandate. Richard V. Lee, Temporary Judge. (Pursuant to Cal. Const., art. VI, §21.) Affirmed.

Charles A. Prawdzik, for Real Parties in Interest and Appellants.

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*This opinion is certified for publication pursuant to rules 976(b) and 976.1 of the California Rules of Court except as to Sections I.B., II, III, IV and V of this opinion.

Shapiro, Posell & Close, Richard E. Posell, Jonathan J. Panzer and Lisa L. Skaist, and Best, Best & Krieger, Paul T. Colzer and Basil T. Chapman, for Plaintiff and Respondent.

No appearance for Defendant.

William J. Adams, City Attorney (Palm Springs) and Siegfried H. Siefkes, Assistant City Attorney, and Freilich, Stone, Leitner & Carlisle and Benjamin Kaufman as Amici Curiae on behalf of Appellants.[1]

This case involves a dispute between the owner/operator of a Palm Springs mobile home park (the petitioner below and the respondent herein – referred to hereinafter as El Dorado) and the residents of that mobile home park (the real parties in interest below and the appellants herein – referred to hereinafter as the residents). The gist of the dispute concerns the application of the Palm Springs municipal rent-control laws by the Palm Springs Rent Review Commission (the respondent below – referred to hereinafter as the Commission) to the space rents to be charged in that mobile home park.

The residents' appeal from an order of the trial court, which order granted El Dorado's petition for a writ of mandate to compel the Commission to approve El Dorado's application for a hardship rent increase. By their appeal, the residents have called upon us to rework the

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[1] In point of fact, the amici curiae in this case represent the position taken by the defendant Commission. By order of this court dated August 3, 1990, the Commission's Respondent's Brief was deemed to be an amicus curiae brief pursuant to rule 14(b) of the California Rules of Court.

fertile fields of contention which we first plowed in *Palacio de Anza* v. *Palm Springs Rent Review Com.* (1989) 209 Cal.App.3d 116 (hereinafter *Palacio*). We conclude that the trial court's order is correct in all respects, and we consequently affirm the same.

FACTS[2]

On April 8, 1980, the citizens of the city of Palm Springs adopted an initiative rent-control ordinance. In general terms, this initiative ordinance: (1) Prohibited rent increases from being imposed more frequently than once a year; (2) limited rent increases to rates of no more than three-fourths of the percentage increase in the Consumer Price Index over any one-year period of time in question; (3) did not contain a "hardship rent increase" provision for landlords, other than a provision which declared the ordinance to be non-applicable to those rental properties as to which the ordinance would operate in a "confiscatory" manner; and (4) required that a determination as to whether such a confiscatory impact had occurred in any one particular case be made by the courts. The initiative ordinance also permitted the City Council of Palm Springs to "supplement" the initiative ordinance "so long as Palm Springs in no way diminishes any protection which this ordinance affords to tenants." (Init. Ord., § 10.)

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[2] In large part, our description of the municipal background underlying this dispute is taken from our opinion in *Palacio*.

On October 1, 1980, the Palm Springs City Council adopted Ordinance No. 1117. This ordinance apparently was adopted to forestall a constitutional challenge to the initiative rent-control ordinance.[3] Ordinance No. 1117 supplemented the initiative ordinance by creating a Rent Review Commission and providing for hardship increases in rents over and above those allowed by the initiative ordinance in certain limited circumstances.

On November 18, 1983, the Commission conveyed a written recommendation to the city council that the city council adopt certain "Guidelines For Hardship Rent Increases" (hereinafter referred to as the Guidelines). The Guidelines set forth a very specific format and procedure for evaluating landlord applications for hardship rent increases. Among the provisions contained in the recommended Guidelines was a provision (section 101(c)(1)(xii)) which permitted the inclusion of certain purchase-money financing interest payments (debt service costs) in the costs which were allowable for the purpose of calculating a landlord's "net operating income."[4] In accordance with the

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[3] Ordinance No. 1117 was apparently intended to overcome any possible constitutional shortcoming in the initiative ordinance resulting from the lack of an "adjustment mechanism" in the initiative ordinance for modifying maximum rental rates in particular cases. (See *Birkenfeld* v. *City of Berkeley* (1976) 17 Cal.3d 129, 169-174.)

[4] These "allowable costs" are often times referred to (both in this opinion and in general) as "allowable operating expenses."

The Palm Springs rent-control law seeks to assure that each landlord receives a "fair" financial return from the landlord's rental property. This return is expressed in terms of a landlord's "net operating income." "Net operating income," in turn, is

Commission's recommendation, the city council adopted the Guidelines by resolution on December 7, 1983.

On January 18, 1984, the city council adopted Ordinance No. 1213. This ordinance was intended to simply restate and codify (as part of the municipal code) the provisions of the prior rent-control ordinances, beginning with the initiative ordinance, and not to supersede or repeal any of those preexisting provisions.

In the spring of 1986, El Dorado was in the process of finalizing its negotiations for the purchase of the mobile home park here in question. Section 101(c)(1)(xii) of the Guidelines, the provision that allowed purchase-money debt service costs to be included as an allowable operating expense in calculating a landlord's net operating income, was of particular concern to El Dorado. El Dorado insisted on a clause in the purchase agreement that

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defined (in a general way) as a landlord's gross income minus allowable operating expenses. The greater the number, amount and types of operating expenses "allowed" for the purpose of calculating a landlord's net operating income, then, the smaller the net operating income itself will be (for any one given level of gross income) – thus making it more likely that a landlord would be permitted to impose a hardship rent increase.

On another, related issue: The Guidelines (as originally adopted) did not permit the characterization of *all* purchase-money debt service costs as an allowable operating expense. Rather, it was only the portion of those costs which exceeded the level of such costs on September 1, 1979 which were "allowable" as an operating expense in calculating a landlord's net operating income. Whenever we refer in this opinion to El Dorado's purchase-money debt service costs, we are referring only to this "excess" cost borne by El Dorado.

would permit it (El Dorado) to withdraw from the purchase of the mobile home park if the Guidelines (and, in particular, section 101(c)(1)(xii)) changed materially prior to the close of the purchase escrow.[5] No such changes in the Guidelines occurred prior to the close of the purchase escrow, and, on April 1, 1986, El Dorado purchased the mobile home park for the sum of $7.5 million – some $7,360,000 of which was financed by promissory notes secured by deeds of trust. On that same day, April 1, 1986, El Dorado filed an application with the Commission for a hardship rent increase. On a "per space" basis, El Dorado's application sought the Commission's approval of a $179.46 monthly rental increase. El Dorado justified its request for a rent increase, to a significant extent, by reference to its purchase-money debt service cost. The residents opposed the application before the Commission.

On April 16, 1986, the Commission opened its hearing on El Dorado's application for a hardship rent

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[5] At oral argument, the Commission contended that El Dorado's interest in section 101(c)(1)(xii) might better be characterized by reference to the words used by the Commission in its final Findings and Decision relating to El Dorado's petition: "Petitioner was aware of the provisions of this guideline before the park was purchased. The provisions of this guideline were a factor in petitioner's decision to purchase the subject property." The language we have used to describe El Dorado's interest in section 101(c)(1)(xii) is not inconsistent with the above language used by the Commission in its Findings and Decision. Further, the language we have used to describe El Dorado's interest in section 101(c)(1)(xii) better reflects the actual, and uncontradicted, testimony given by El Dorado during the Commission's hearing on the matter.

increase. This hearing was conducted periodically over the next two years and three months.

On November 7, 1986, while El Dorado's application for a hardship rent increase was still pending, the Commission recommended to the Palm Springs City Council that it (the city council) repeal section 101(c)(1)(xii) of the Guidelines. On December 15, 1986, the city council acted on this recommendation and adopted Resolution No. 16072, repealing and deleting section 101(c)(1)(xii) from the Guidelines.

On July 18, 1988, the Commission completed its hearing on El Dorado's 1986 application for a hardship rent increase and indicated its intended decision on the matter. On October 17, 1988, the Commission issued its final written Findings and Decision with respect to that application. Of particular interest here, the Commission declined to allow El Dorado's purchase-money debt service cost as an operating expense in calculating El Dorado's net operating income, concluding that the city council's repeal of section 101(c)(1)(xii) of the Guidelines had had the effect of eliminating those costs as an allowable operating expense insofar as El Dorado's application for a rent increase was concerned.[6] The net result of the

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[6] Somewhat more accurately, the Commission *did* allow a partial increase in the amount of debt service cost to be "passed through" as an operating expense, but the partial increase was *not* allowed as a "hardship increase." Rather, the Commission calculated a "standard" debt service cost increase – three-fourths of the percentage increase in the Consumer Price Index from 1979 (the "base year" for the purpose of calculating cost increase allowances) to 1986 (the year of El Dorado's application for a "hardship" rent increase) – applied that reduced

Commission's decision was an approval of a $65.17 "per space" monthly rental increase for El Dorado – some $114.29 per space/per month less than the increase for which El Dorado had applied.

In the meantime, on July 26, 1988 (shortly after the Commission had completed its hearing on El Dorado's rent increase application but before the Commission's final written decision on that application was released), El Dorado notified its residents that the monthly space rentals within the mobile home park would be increased, effective September 1, 1988, by $65.17 per space. El Dorado has, in fact, collected the $65.17 per space monthly rental increase since September 1, 1988.

On March 3, 1989, this court filed its opinion in *Palacio*. In that opinion, we addressed and resolved many of the same regulatory issues which had been points of contention during the Commission's hearing on El Dorado's application for a hardship rent increase. In particular, we had occasion in *Palacio* to address the interplay

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percentage to the amount of annual debt service cost borne by El Dorado's predecessor-in-title in 1979, and allowed the resulting figure ($107,368.00) as an increase in El Dorado's allowable operating expenses. Noteworthy here, the amount of increased debt service cost allowed to El Dorado by the Commission as an operating expense: (1) Was allowed pursuant to the "standard" rental increase provisions of the applicable local regulations, not pursuant to the extraordinary "hardship" rental increase provisions of those regulations; and (2) was less than one-fifth of the $578,142.00 borne by El Dorado in 1986 as increased debt service cost.

On a related matter, the Commission also declined to treat certain capital expenditures made by El Dorado as an allowable cost in calculating El Dorado's net operating income.

between (1) section 101(c)(1)(xii) of the Guidelines, (2) the repeal of that section by the Palm Springs City Council and (3) purchase-money debt service obligations which pre-dated the repeal of that section. In *Palacio,* we held:

"The Guidelines and rent-control ordinances did not create a statutory 'right of action' in Palacio. Rather, those enactments created land-use property rights which became vested in Palacio when the financing of the apartment purchase was undertaken in reliance on the existing rent-control laws. In this sense, Palacio enjoys a situation analogous to that of one who has established the right to pursue a nonconforming use on land following a zoning change. (*City of Santa Barbara* v. *Modern Neon Sign Co.* (1961) 189 Cal.App.2d 188.) Any attempt to retroactively apply the repeal of the Guidelines' debt financing cost allowance to Palacio's vested rights would constitute an invalid impairment of an established economic/property interest without due process of law. [¶] Notwithstanding the adoption of resolution No. 16072 [the repeal of section 101(c)(1)(xii) of the Guidelines], Palacio continues to enjoy the benefit of the Guidelines' debt financing cost allowance provisions which were in effect when Palacio assumed its purchase debt obligation." (*Palacio,* at pp. 120-121.)

On May 22, 1989, encouraged by our opinion in *Palacio,* El Dorado filed a petition for a writ of mandate in the court below. In general terms, El Dorado's petition sought the issuance of a writ of mandate to compel the Commission to grant that portion of El Dorado's application for a hardship rent increase which had not previously been granted by the Commission. As noted above, far and away the most significant issue remaining in

dispute between El Dorado and the Commission was the allowance of El Dorado's purchase-money debt service costs as an operating expense for the purpose of calculating El Dorado's net operating income.

The residents filed a demurrer to El Dorado's petition for a writ of mandate. The residents' demurrer was largely based on their argument that the 90-day statute of limitations set forth in section 1094.6 of the Code of Civil Procedure controlled El Dorado's challenge to the Commission's decision, that this statute of limitations had expired prior to El Dorado's having filed its petition for a writ of mandate, and that, consequently, the trial court was without jurisdiction to consider the matter.[7]

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[7] Section 1094.6 of the Code of Civil Procedure, and its various subdivisions, will hereinafter be referred to by section number, and/or by subdivision letter designation, only.

In pertinent part, section 1094.6 provides:

"(a) Judicial review of any decision of a local agency, . . . may be had pursuant to Section 1094.5 of this code only if the petition for writ of mandate pursuant to such section is filed within the time limits specified in this section.

"(b) Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision in any applicable provision of any statute, charter, or rule, for the purposes of this section, the decision is final on the date it is made. . . .

". . . .

"(e) As used in this section, decision means a decision subject to review pursuant to Section 1094.5, . . . denying an application for a permit, license or other entitlement, . . .

"(f) In making a final decision as defined in subdivision (e), the local agency shall provide notice to the party that the time within which judicial review must be sought is governed by this section. . . .

Following a hearing on the matter, the trial court concluded that the Commission had failed to comply with the notice requirements of section 1094.6, subdivision (f), and that the 90-day statute of limitations provided by section 1094.6 had consequently been tolled prior to El Dorado's having filed its petition for a writ of mandate. Having reached the above conclusion, the trial court overruled the residents' demurrer.[8]

Following further briefing and a hearing on the merits of El Dorado's petition for a writ of mandate, the trial court granted El Dorado's petition on December 4, 1989. On December 8, 1989, the trial court issued a detailed writ of mandate. In primary effect, the writ compelled the Commission to apply the provisions of (the now repealed) section 101(c)(1)(xii) of the Guidelines to

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"(g) This section shall be applicable to a local agency only if the governing board thereof adopts an ordinance or resolution making this section applicable. If such ordinance or resolution is adopted, the provisions of this section shall prevail over any conflicting provision in any otherwise applicable law relating to the subject matter, unless the conflicting provision is a state or federal law which provides a shorter statute of limitations, in which case the shorter statute of limitations shall apply."

With regard to subdivision (g), above, the Palm Springs City Council adopted an ordinance (Ordinance No. 1162) on September 15, 1982, making section 1094.6 applicable to the judicial review of local administrative decisions.

[8] The trial court also found that the residents, through their prior attorney of record, had waived any statute of limitations argument under section 1094.6. Inasmuch as we agree with the trial court's determination that the 90-day statute of limitations provided by section 1094.6 was tolled in this case, we need not address the correctness of the trial court's waiver determination.

El Dorado's application for a hardship rent increase so as to allow El Dorado's purchase-money debt service costs as operating expenses in calculating El Dorado's net operating income. The writ also compelled the Commission to allow, as operating expenses, certain other lesser costs borne by El Dorado (costs previously denied by the Commission as allowable operating expenses) in calculating El Dorado's net operating income.

The residents have appealed from the trial court's grant of El Dorado's petition for a writ of mandate. On appeal, the residents have raised the following contentions:[9] (1) The trial court acted in excess of its jurisdiction in granting El Dorado's petition for a writ of mandate in that the 90-day statute of limitations applicable to El Dorado's petition (the statute of limitations set forth in section 1094.6) had long since expired by the time El Dorado filed its petition; (2) the decision which was issued by the Commission with respect to El Dorado's application for a hardship rent increase was res judicata (after 90 days had run from the date of the decision) as to any subsequent proceeding concerning the same subject matter; (3) El Dorado, having accepted the benefit of the rent increase allowance which was granted by the Commission, was estopped from seeking a writ of mandate in an effort to obtain an even greater rent increase; (4) the trial court's decision to issue the writ of mandate was

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[9] This listing of contentions has been somewhat reordered and recharacterized by us in the interest of (1) sequencing the contentions in a more logical order and (2) clarifying the underlying legal issues raised by the residents on appeal.

improper in that it was based on an invalid, unenforceable provision of the Guidelines (section 101(c)(1)(xii) of the Guidelines); (5) *Palacio* is wrongfully decided, and El Dorado cannot be deemed to have acquired a vested right to indirectly "pass through" purchase-money debt service costs to the mobile home park residents as an allowable operating expense; and (6) the writ of mandate issued by the trial court violates the separation of powers doctrine by excessively intruding on the Commission's own discretionary authority (see Code of Civ. Proc., § 1094.5, subd. (f)).[10]

We conclude that the residents' contentions are without merit and affirm the trial court's order (and writ) in full. Additional facts will be referred to, as needed, in the discussion which follows.

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[10] The degree of judicial deference to administrative discretion which is required of courts in this area of the law by the separation of powers doctrine is statutorily expressed in subdivision (f) of section 1094.5 of the Code of Civil Procedure: "The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent."

DISCUSSION

I.

THE TIMELINESS OF EL DORADO'S PETITION FOR A WRIT OF MANDATE

A. The Application Of Section 1094.6.

The parties are in agreement that section 1094.6 governs the timeliness of El Dorado's petition for a writ of mandate. The parties are also in agreement that: (1) El Dorado's petition was filed more than 90 days after the Commission's final written decision was issued; and (2) the Commission never gave El Dorado direct notice that section 1094.6 would govern the timeliness of an attempt to secure judicial review of the Commission's decision.[11] Not surprisingly, however, the parties are in disagreement as to whether El Dorado's petition for a writ of mandate was timely under this set of circumstances.

The effect of a failure by a local agency to provide the notice required by section 1094.6, subdivision (f), on the running of the 90-day statute of limitations set forth in subdivision (b) of that section was recently addressed in *Cummings* v. *City of Vernon* (1989) 214 Cal.App.3d 919:

"In light of the background of this statute we conclude the Legislature intended the [90-day] period to run

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[11] It is, perhaps, somewhat overstating the matter to say that there is an "agreement" to the effect that the Commission failed to directly provide El Dorado with the notice required by section 1094.6, subdivision (f). However, neither the residents nor the Commission argue that such notice *was* directly given – and the record is devoid of any indication that such a notice was given.

from the date of giving notice. The legislative background and the purpose of section 1094.6 were discussed in *Hittle* v. *Santa Barbara County Employees Retirement Assn.* (1985) 39 Cal.3d 374, 386-387. Prior to enactment of section 1094.6, petitions for administrative mandamus to review local agency decisions were subject to the general statutes of limitations, which were three years for statutory liability and four years for other cases unless otherwise specified. (*Id.* at p. 386.) Courts criticized these periods as unduly long, and section 1094.6 was the legislative response to this problem. It gave local agencies the *option* of adopting, by ordinance or resolution, a 90-day limitation period for seeking judicial review of their administrative decisions. (*Id.* at pp. 386-387.)

"This background makes clear the importance of the notice requirement in subdivision (f). Without the enactment of section 1094.6 and adoption of section 1094.6 by local ordinance or resolution, the applicable statute of limitations would be three or four years. The Legislature considered it vitally important that parties be notified a 90-day period is applicable instead.

"Since the application of section 1094.6 drastically reduces the statute of limitations, we should avoid an interpretation which shortens the period even further. In *Hittle* v. *Santa Barbara County Employees Retirement Assn., supra,* 39 Cal.3d at page 387, the court held that section 1094.6 impliedly prohibits the local agency from adopting a limitation period *shorter* than 90 days. If the period in section 1094.6 were to run from the date of the decision regardless of the date of notice, any substantial delay in giving the notice would, as a practical matter, substantially reduce the actual time available for preparing a

petition. Since section 1094.6 benefits local agencies by reducing the statute of limitations, requires local agencies to give the notice, and impliedly prohibits local agencies from adopting a shorter limitation period, it should not be interpreted in a way which permits local agencies to shorten the period even further by delaying the notice. This is avoided if the local agency's decision does not become final for the purpose of subdivision (b) until the notice required by subdivision (f) is given." (*Cummings* v. *City of Vernon, supra,* 214 Cal.App.3d at pp. 922-923.)

Cummings reached its conclusion that a local agency decision should not be deemed to be final for the purpose of subdivision (b) until the notice was given pursuant to subdivision (f), at least in part, because of the peculiar language used by the Legislature in subdivision (f): "*In making a final decision* . . . the local agency shall provide notice. . . . " (Emphasis added.) *Cummings* saw this language as "reasonably impl[ying] that providing the notice is an essential condition for the decision to become final." (*Id.* at p. 922.)

While we agree with *Cummings* that the 90-day statute of limitations of section 1094.6 does not begin to run until the subdivision (f) notice is given, we do not agree that that notice must be given in order that the local agency's decision be deemed final for the purpose of subdivision (b). There are two reasons for our disagreement. First, it seems to us that one must give section 1094.6 a strained reading to conclude that that section uses the phrase "final decision" to mean anything other than, or more than, the substantive decision reached, and then issued in final form, by a local agency following the

completion of that agency's administrative decision-making processes. Second, taken to its (il)logical conclusion, *Cummings'* position on "finality" would permit a local agency to preclude a decision's *ever* becoming final by the simple expedient of never issuing a notice pursuant to subdivision (f). In light of the fact that only "final" administrative decisions are subject to judicial review (see Code of Civ. Proc., § 1094.5, subd. (a)), *Cummings'* position on "finality" results in a state of affairs wherein the mere failure of a local agency to give notice pursuant to subdivision (f) effectively insulates an agency decision from judicial review. This, clearly, is not a result intended by our Legislature.

it seems to us that the better course in interpreting section 1094.6 is to avoid any attempt to give "finality" a strained reading and, instead, to simply read the section as containing a 90-day statute of limitations that is *tolled* until such time as the subdivision (f) notice is given. This interpretation of the section best achieves the overall harmonization of the section's various subdivisions. (*Pitney-Bowes, Inc.* v. *State of California* (1980) 108 Cal.App.3d 307, 313.) We make the following two observations concerning our interpretation of section 1094.6:

(1) Under this interpretation, an aggrieved party need not wait until receiving notice pursuant to subdivision (f) to seek judicial review of a local agency's administrative decision -- that decision is "final" under

subdivision (b) as soon as the local agency has issued its decision in final form;[12] and

(2) A failure by a local agency to give a subdivision (f) notice would not give an aggrieved party an "open-ended" period of time within which to seek judicial review of the administrative decision in question.[13] Notwithstanding the tolling of the 90-day statute of limitations in such a case, the doctrine of laches would still apply to the timeliness of a party's effort to secure judicial review. It is clear that mandamus is a type of action in which equitable principles, such as the doctrine of laches, apply. (*Hittle* v. *Santa Barbara County Employees Assn.* (1985) 39 Cal.3d 374, 386, citing *Conti* v. *Board of Civil Service Commissioners* (1969) 1 Cal.3d 351, 357, fn.3.) It is equally clear that laches may apply independently in a mandate proceeding, notwithstanding the existence of an applicable statute of limitations. (*People* v. *Department of Housing & Community Dev.* (1975) 45 Cal.App.3d 185, 195.)[14]

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[12] In those instances where an agency provides for an administrative reconsideration of its decisions, a decision would not be "final" until the opportunities for administrative reconsideration had been exhausted or, in appropriate cases, otherwise allowed to expire.

[13] El Dorado has suggested that the prior three and four year statutes of limitation (see discussion in *Cummings, ante*) would apply if the local agency failed to ever give a subdivision (f) notice. This suggestion lacks merit, however, because it simply ignores subdivision (g) – the provision which gives section 1094.6, if adopted, overriding authority with respect to the timeliness of a petition for judicial review.

[14] The residents have not argued laches at any point in this case, and we do not address the direct applicability of that equitable doctrine to the facts of this case.

The residents have argued that the notice requirement of subdivision (f) was met for all practical purposes just as soon as the Commission issued its final decision. The residents base their argument on their contention that counsel for El Dorado is so knowledgeable in the area of municipal law that they must have known of the 90-day statute of limitation. This argument is utterly specious. The residents' argument completely ignores the clear statutory mandate set forth in subdivision (f) that "the local agency shall provide notice to the party."[15]

The Commission argues, in its amicus brief, that the city's adoption of section 1094.6 by ordinance constitutes constructive notice to all parties of the applicability of that section to local administrative decisions. Again, this argument simply overlooks, or ignores, the plain mandate of subdivision (f). The use of the phrase "In making a final decision" in subdivision (f) compels the conclusion that the Legislature intended that a local agency be responsible for the additional task of giving direct notice to a party pursuant to subdivision (f) in *each* instance where a final decision is rendered. With respect to the

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[15] The residents have also argued that only four conditions need be met in order that section 1094.6 be applicable and operational in any one given situation – and that all four conditions are met in this case. In support of this argument, the residents cite *Foster* v. *Civil Service Com.* (1983) 142 Cal.App.3d 444, 450-451. It is true that *Foster* sets forth four conditions necessary to section 1094.6's becoming applicable and operational in any one given situation – but *Foster* notes that section 1094.6 becomes applicable and operational in the presence of the four conditions *"unless otherwise tolled."* (*Id.*, at p. 450, emphasis added.) The residents failed to allude to this critical qualification in their citation to *Foster.*

giving of such notice, we note: (1) A "direct" notice is one which is communicated forthwith and in a straightforward manner to a party or that party's recognized agent (e.g., a party's attorney during the proceedings in question) as soon as the administrative decision has become final; (2) a subdivision (f) notice is effective when *given* in the manner outlined in note (1), above, not when it is actually *received*; and (3) there is no statutory requirement that the notice be given in writing – although a local agency might well wish to do so in the interest of establishing a record that the notice was, in fact, given.

El Dorado's petition was not barred by the 90-day statute of limitations set forth in section 1094.6.

B. Res Judicata.

The residents have argued that the Commission decision was final and res judicata as to the issues therein addressed 90 days after that decision was issued and that, consequently, the trial court was precluded from issuing the writ here in question. The residents have based this argument on (a) the 90-day statute of limitation set forth in section 1094.6 and (b) *California Coastal Com.* v. *Superior Court* (1989) 210 Cal.App.3d 1488. There are two reasons why the residents' argument is not well founded and need not detain us long.

First, as noted in the previous section of this opinion, the 90-day statute of limitation set forth in section 1094.6 was tolled in this case as a result of the Commission's failure to provide the appropriate notice required by subdivision (f) of that section.

Second, the reasoning of *California Coastal Com.* (insofar as the issue of res judicata is concerned) has no application to the case at hand. *California Coastal Com.* is a case that concerns a party's failure to seek judicial review of an administrative decision, by way of mandamus, within the applicable time limitations set forth in section 30801 of the Public Resources Code – it has nothing to do with the statutory scheme at play in this case. In *California Coastal Com.*, the aggrieved party, after the running of the statutory 60-day statute of limitation applicable to challenges to the agency decision there in question, filed an inverse condemnation action against the Coastal Commission seeking just compensation for the dedication of a public access easement which had been required of him by the Coastal Commission in an earlier administrative proceeding. The Court of Appeal affirmed the trial court's sustaining of a demurrer to the action because the Coastal Commission's decision, after the running of the 60-day statute of limitation, was final and res judicata as to the legality of the public access easement dedication requirement.

Here, unlike the situation present in *California Coastal Com.*, there is no collateral action challenging the Commission's administrative decision. In this case, we are presented with a direct challenge by way of mandamus. As was noted in Witkin's *California Procedure*: "By its very nature, the doctrine [of res judicata] does not prevent timely direct attack, e.g., by motion for new trial or appeal [or by petition for judicial review by way of an administrative mandamus proceeding]. It only applies where the judgment is final and safe from direct attack, and is *collaterally attacked* in a subsequent proceeding.

[Citations.]" (7 Witkin, Cal. Procedure (3d ed. 1985) Judgment, § 194, pp. 629-630.) *California Coastal Com.* is totally inapposite to the case at hand and the doctrine of res judicata does not act to bar El Dorado's mandamus action.

II.

ESTOPPEL

The residents have argued that El Dorado acquiesced in the Commission's approval of a $65.17 per space/per month hardship rent increase by charging and collecting that amount from each of the residential units in the mobile home park for eight months prior to filing its petition for a writ of mandate, and that this acquiescence, this acceptance of the benefit of the Commission's decision, should have served to estop El Dorado from challenging the adequacy of that decision. In support of their argument, the residents have relied primarily on *Chang* v. *City of Palos Verdes Estates* (1979) 98 Cal.App.3d 557, a case which, in turn, relies primarily (with respect to the issue here in question) on *Hellman Commercial T. & S. Bk.* v. *Alden* (1929) 206 Cal.592.[16] This argument, too, need not detain us long.

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[16] The residents have also purported to rely on a 1986 District Court of Appeal case entitled *Fontana Unified School Dist.* v. *Burman*. Review was granted in this case by our Supreme Court. (See subsequent opinion at 45 Cal.3d 208.) Counsel for the residents does not serve his clients well by citing to legal authority which was vacated several years ago.

Chang and *Hellman* both stand for the rather unremarkable proposition that a party cannot appeal from (or, impliedly, otherwise seek review of) *that portion* of a judgment or decision in which the party has acquiesced and from which the party has accepted the benefit. That proposition has no application in this case. El Dorado sought judicial review of that portion of the Commission's decision which *denied* $114.29 in per space/per month hardship rent increases – not the portion of that decision which *allowed* $65.17 in per space/per month hardship rent increases. The legal issue which underlies this argument by the residents has already been resolved by our Supreme Court, and, insofar as this case is concerned, in El Dorado's favor: "[A] reversal of the judgment or order cannot affect the right of the party to the benefit which he has secured thereby, as when the only controversy relates to a greater sum. That is to say, where there is no controversy as to a party's right to the amount for which the judgment is given, his acceptance thereof will not preclude an appeal based upon a claim that he was entitled to a greater amount." (*Estate of Hubbell* (1932) 216 Cal. 574, 577.)

El Dorado was not estopped to challenge the Commission's decision by virtue of its (El Dorado's) having "accepted" the Commission's allowance of a $65.17 per space/per month hardship rent increase.

III.

VALIDITY OF SECTION 101(c)(1)(xii)

The next argument asserted against the trial court's issuance of the writ of mandate concerns the very validity

of the debt service "pass through" provision, section 101(c)(1)(xii) of the Guidelines, itself. In essence, the residents argue that section 101(c)(1)(xii) violated, from its inception, the original rent control initiative ordinance, that this violation rendered the "pass through" provision invalid from the outset, and that the trial court was consequently without authority to compel the Commission to utilize that provision in processing El Dorado's application for a hardship rent increase. The residents base their argument on the wording of the initiative ordinance that prohibits the city from adopting any changes to the rent control laws which would "diminish[] any protection which this ordinance affords to tenants." The residents have misconstrued the scope and application of that language.

As noted previously in this opinion (see fn. 3, *ante*), the legislation which created the Commission and provided for hardship rent increases was adopted so as to conform the city's rent control laws to the constitutional dictates of due process. The Guidelines were (and are) nothing more than operational rules designed to assist in the implementation of this local legislation. As such, the Guidelines must be viewed and evaluated in the same context as the local legislation which they are designed to implement. With this in mind, it becomes clear that section 101(c)(1)(xii) of the Guidelines did not violate the above-referenced prohibition of the initiative ordinance. Tenant protection under the initiative ordinance cannot be understood to extend to *unconstitutional* protection against any and all rent increases. To the extent that the Guidelines merely serve to validate the city's rent control

laws (in a constitutional sense) by implementing legislative provisions designed to assure the due process of law for landlords, they (the Guidelines) do not diminish any protection which tenants in the city were entitled to under the initiative ordinance.

Given the fact that the hardship rent increase guidelines, in general, are valid notwithstanding the (arguably) overbroad language of the initiative ordinance, we decline to sit in judgment on the legislative wisdom reflected in the adoption (or repeal) of any one particular scheme for evaluating and weighing hardship rent increase application.[17] Section 101(c)(1)(xii) of the Guidelines was not, as a matter of law and *vis-a-vis* the initiative ordinance, invalid and unenforceable.

IV.

THE CORRECTNESS OF THE PALACIO DECISION

Both the residents and the Commission, as an amicus, have challenged the correctness of *Palacio*, an opinion

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[17] The residents, in particular, have expended a great deal of energy in explaining the "evils" of debt service cost allowance provisions in rent control laws. It may well be, as the residents contend, that such allowance provisions can operate over time to "undo" the very protections which rent control laws are designed to provide. (Whether or not such provisions *would* operate in that fashion in any one particular case is problematic.) However, and even assuming the fullest measure of validity for the residents' contention, the courts do not exist to provide remedies for legislative shortsightedness. Legislative bodies themselves have the power to remedy such a deficiency.

upon which the trial court admittedly relied heavily in determining to issue the writ in El Dorado's favor.

The arguments asserted in this regard are, in large part, the same arguments which this court addressed in deciding *Palacio*. Having reviewed the matter, we conclude that *Palacio*, as to both its published and non-published portions, was correctly decided. However, in the interest of laying to rest a number of concerns expressed by both the residents and the Commission, we make the following comments concerning *Palacio*:

(1) *Palacio* does *not* stand for the proposition that any landlord holding rental properties within the city which were purchased with a loan predating the repeal of section 101(c)(1)(xii) is entitled to apply for a debt service cost "pass through" rent increase. *Palacio* applies only to debt service costs incidental to rental property purchase loans which were initially "assumed" or "undertaken" during that relatively short period of time while section 101(c)(1)(xii) was in effect. (*Palacio, supra*, 209 Cal.App.3d at p. 120.)

(2) Consistent with the immediately preceding comment, *Palacio* does *not* apply to any "refinancing" which is carried out following the repeal date of section 101(c)(1)(xii). Any such refinance debt burden would have been "assumed" *after* section 101(c)(1)(xii) ceased to be effective.

(3) Contrary to the contentions of the residents and the Commission, *Palacio* does not conflict with the established understanding of "vested rights" which exists in California. Our Supreme Court had recent occasion in *City of West Hollywood* v. *Beverly Towers, Inc.* (1991) 52

Cal.3d 1184 to examine the concept of "vested rights" in the context of condominium conversions under the Subdivision Map Act. In that case, the Supreme Court reasoned that "principles of fairness" require that a developer's "investments and expectations" be safeguarded as of that point in time when the local governmental agency has performed its final act of discretion in approving the developer's project. (*Id.*, at p. 1190.) So, too, in this case, do principles of fairness require that El Dorado's investment (reflected by El Dorado's having assumed an irrevocable loan repayment obligation) and expectation (that the city's professed concern that landlords be able to receive a "fair" financial return (see fn. 4, *ante*) would remain constant) be safeguarded from legislative repeals occurring after the Commission had performed its final discretionary acts. As we discuss in the next following section of this opinion (Part V.), the Commission concedes (essentially) that its discretionary review and evaluation of El Dorado's application for a debt service cost "pass through allowance" resulted in a determination in El Dorado's *favor*, and that it was only the city's repeal of section 101(c)(1)(xii) which compelled the Commission's denial of that cost allowance.[18] This

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[18] We do not mean to suggest that the Commission had much in the way of discretion insofar as reviewing and evaluating El Dorado's application was concerned. As we discussed in detail in Part II of the *Palacio* decision, the Guidelines are mandatory in nature and the Commission is bound to follow the formulaic requirements of the Guidelines in ruling on rent increase applications. In that unpublished portion of *Palacio*, we said: "The Commission serves a valuable discretionary function in receiving and weighing evidence in support of applications for rent increases. The Commission then has the obligation to

denial violated El Dorado's "vested right" to allocate the service cost of its purchase debt to the residents under section 101(c)(1)(xii).

V.

JUDICIAL USURPATION OF ADMINISTRATIVE DISCRETION

Finally, the residents and the Commission argue that the trial court exceeded its authority under section 1094.5, subdivision (f), of the Code of Civil Procedure by issuing a writ of mandate that controls the discretion legally vested in the Commission. The residents and the Commission base this argument on the fact that the trial court's writ directs the Commission to reach certain conclusions concerning El Dorado's application for a hardship rent increase.

While it is true that the courts have no authority to control or otherwise direct the exercise of lawful discretion lodged in an administrative body, that general observation has no application in this case. In this case, the trial court merely took the "numbers" which the Commission had found to be operative with respect to El Dorado's application for a hardship rent increase (numbers which are not in dispute), inserted those numbers in the mandatory, formulaic matrices established by the Guidelines, and arrived at a final mathematical conclusion as to the level of hardship rent increase allowable under the Guidelines. In short, there was no "discretion" to be

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ministerially apply the Guidelines to the evidence in each instance." (Emphasis added.)

exercised by the Commission with respect to the matters addressed in the trial court's writ of mandate.

This lack of remaining discretion is particularly clear with respect to the issue of the "pass through" of debt service costs. In its final decision, the Commission *conceded* that the Guidelines, if they were understood to include section 101(c)(1)(xii), required the full amount of the "pass through" requested by El Dorado: "If this provision of the guidelines [section 101(c)(1)(xii)] had not been repealed by the City Council, petitioner would have met the required conditions."

The trial court's writ of mandate does not unlawfully intrude upon the vested discretion of the Commission.

DISPOSITION

The trial court's order and writ are affirmed in full.

CERTIFIED FOR PARTIAL PUBLICATION.

TIMLIN
J.

We concur:

RAMIREZ
P.J.

MC DANIEL
J.*

* Retired Associate Justice of the Court of Appeals sitting under assignment by the Chairperson of the Judicial Council.